

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

STATE OF TENNESSEE, *ex rel.*)
 ROBERT E. COOPER, JR., ATTORNEY)
 GENERAL and REPORTER,)
)
 Plaintiff,) JURY DEMAND
)
 v.) No. 2:08-cv-2785
)
)
 BLUEHIPPO FUNDING, LLC, et al.)
)
 Defendants.)

ATTACHMENT A TO STATE'S MEMORANDUM IN SUPPORT

GENERAL FACTUAL ALLEGATIONS

7. As a preface, the State of Tennessee generally alleges that the Defendants have engaged in unlawful commercial practices in the way they advertise, promote, offer, and bill their “layaway” and financing plan to consumers who have had past credit problems,¹ who are indigent,² and/or those who have fixed or limited incomes³ for computers and other products that

1 Ex. 1, Aff. of Georgia Harper at para. 6; Ex. 2, Aff. of Tina White at para. 5; Ex. 3, Aff. of Alice Forrester at para.
2 3; Ex. 4, Aff. of Connie Roberts at para. 3; Ex. 5, Aff. of Patty Serda at para. 3; Ex. 6, Aff. of Danika Blunt at para.
3 3; Ex. 7, Aff. of Billy Bowling at para. 3; Ex. 8, Aff. of Jessica King at para. 3; Ex. 9, Aff. of Angela Atkins at para.
4 3; Ex. 10, Aff. of Kathy Collins at para. 3; Ex. 11, Aff. of Cynthia Brunat at para. 3; Ex. 12, Aff. of Angela Ard at
5 para. 3; Ex. 13, Aff. of Nora Shrewsbury at para. 3; See Ex. 14, Aff. of Shinetta Berry at para. 6; See Ex. 16, Aff. of
6 Rebecca Good at para. 6; and Ex. 17, Aff. of Deldra Wells at para. 6; and Ex. 18, Aff. of Christine Pruitt at para. 3
7 (presently unemployed and lives on Social Security disability); Ex. 20, Aff. of Brenda Lowrance, at para. 6; Ex. 21,
8 Aff. of Cari Wilson, at para. 3. See also, Ex. 38, BlueHippo Training Manual representing that BlueHippo's
9 customers "frequently have had trouble getting credit or getting it again."

2 Ex. 38, BlueHippo Training Manual stating that BlueHippo's customers are "low and moderate income families (typically \$25K/yr income & less)."

3 Ex. 19, Aff. of Linda Taylor, at para. 3 (disabled widow on fixed income); Ex. 5, Aff. of Patty Serda, at para. 3 (lives on Social Security); Ex. 3, Aff. of Alice Forrester, at para. 3 (single mother whose also a student with two children); Ex. 20, Aff. of Brenda Lowrance, at para. 3 (lives on disability); Ex. 11, Aff. of Cynthia Brunat, at para. 3 (disabled); Ex. 9, Aff. of Angelea Atkins, at para. 3 (unemployed as of date affidavit was signed; two dependents

the Defendants do not possess, own, or ship.⁴ The Defendants offer products to consumers in a manner that poses negligible, if any, risk of loss to them, but poses great risk of significant monetary loss to consumers, many of whom can least afford it.

8. The State generally alleges that the Defendants have deceived consumers as to the fundamental nature of their default “layaway” payment program, under which consumers stand to receive their product from a third party supplier or manufacturer only after making a year’s worth of non-refundable payments - the total of which costs the consumer two and three times more than what suppliers or licensed retailers charge for the same product.⁵

9. Further, the State generally alleges that the Defendants have both fraudulently misrepresented that consumers were required to agree to their financing program and failed to clearly and conspicuously disclose the material terms associated with their financing program.

10. The Defendants have also deceived consumers as to material terms of their two offers, the layaway program and the financing program, by selectively highlighting the more attractive term of one offer without identifying the offer to which the term applies or without clearly and conspicuously disclosing the less attractive term contained in the other offer. By way of example, the Defendants have described the lower total cost under the layaway plan without identifying it as a term of the “Layaway Agreement” only or clearly and conspicuously disclosing the higher total price under the financing plan. The Defendants have also described the earlier

live with her); Ex. 10, Aff. of Kathy Collins, at para. 3; Ex. 21, Aff. of Cari Wilson, at para. 3 (currently receiving worker’s compensation benefits, also supports disabled mother and daughter); Ex. 22, Aff. of James Robertson, at para. 3 (wife is currently on full disability / Mr. Robertson previously had credit problems); Ex. 60, Aff. of Sarah Reid, at para 3; Ex. 62, Aff. of Judy Kay Young, at para. 2 (lives on disability); Ex. 63, Aff. of Linda McIntosh (has multiple sclerosis, diabetes, and fibromyalgia and lives on social security disability); Ex. 66, Aff. of Grace Penson (unemployed single mother); Ex. 18, Aff. of Christine Pruitt, at para. 3 (lives on social security disability); See also, Ex. 38, BlueHippo Training Manual representing that BlueHippo’s customers are “low and moderate income families (typically \$25K/yr income & less).”

⁴ See Ex. 70, Ltr from Clay Friedman.

⁵ See also, Ex. 7, Aff. of Billy Bowling, at para. 15 (“I paid over \$3400.00 to Blue Hippo for my computer and BlueHippo has refused to help me with my order and get the computer that I ordered. I feel this is especially unfair because I have seen the same computer that I ordered from BlueHippo retail for about \$900.00.”)

shipping date under the financing plan without identifying it as a term of the financing agreement only or clearly and conspicuously disclosing the much later shipping date under the “layaway” plan.

11. The Defendants’ advertisements throughout have failed to clearly and conspicuously disclose basic information of the Defendants’ offer including the specific product model, the total cost of the product, the date that the computer will be delivered, or the non-refundability of payments.

12. Aside from the above, the State generally alleges that the Defendants have: (a) falsely represented that select “free” merchandise would be sent with all orders, (b) consistently failed to clearly and conspicuously disclose terms required by state statute associated with offers of “free” merchandise, (c) affirmatively misrepresented the consistency of contractual terms between verbal and written contracts, (d) falsely represented that the Defendants’ financing agreement was required, (e) used sweeping terms in advertisements and other materials such as “no catch, no strings attached” that deceptively imply that the Defendants’ offer is not subject to numerous restrictions, terms and conditions which are contained, albeit inadequately, in the Defendants’ contracts, (f) failed to clearly and conspicuously disclose the Defendants’ no refund, extremely limited, or store-credit refund policy, (g) misrepresented shipping dates to consumers, (h) misrepresented the source of the products the Defendants’ offer, (i) deliberately and falsely represented that the Defendants’ offer includes “no credit checks,” (j) misrepresented the nature of the Defendants’ “guaranteed approval” claim, (k) failed to clearly and conspicuously disclose material conditions associated with approval, (l) used a sweeping default provision that purportedly allows Defendants to accelerate all amounts owed and raise interest rate to the highest allowed by law or 24% APR for the smallest of technical violations, (m) used unlawful

choice of law and forum selection clauses, (n) failed to disclose other material terms, (o) actively misrepresented and failed to clearly and conspicuously disclose material terms of the Defendants' rebate program, (p) established a customer service program that effectively deters the consumer's ability to seek redress for complaints, (q) debited consumer checking accounts counter to purported verbal and written agreements, (r) misrepresented that the Defendants' online portal contained the security mechanism SSL to protect the transmission of personal information, and (s) implicitly or directly misrepresented the Defendants licensure or registration status to make consumer loans.

13. Further, the State alleges that the Defendants, as of November 20, 2007, have collectively accepted \$2,629,870.91 from 4,542 consumers with billing addresses in Tennessee and provided only \$58,269.11 in refunds.

SPECIFIC FACTUAL ALLEGATIONS BACKGROUND

14. The Defendants sell computers and other products over the phone and in a nominal amount via the Internet.

15. The Defendants do not manufacture, possess, own, or ship the computers and other products they offer for sale.

16. Instead, the Defendants offer a way to fund the purchase of a computer or other product from third party manufacturers or suppliers.

17. Currently, the Defendants offer two plans to fund the purchase of a computer: the "layaway" plan and the "financing" plan.

18. Effectively, the current "layaway" program operates as a savings account in which the Defendants collect non-refundable payments from the consumer.

19. The total amount of payments to the Defendants for a given product is usually up to two (2) or three (3) times more than what the consumer could have paid if he or she ordered the product directly from the manufacturer, supplier or a licensed retailer.

20. Under the current “layaway” program, the Defendants only order the computer or other product from the manufacturer or supplier (e.g. Dell or previously Gateway) at the conclusion of all scheduled payments, which is usually one year from the original order date.

21. Currently, after a requisite number of payments are made under the “layaway” plan and if the consumer is deemed creditworthy by the Defendants’ auditors, the Defendants then offer to extend credit to the consumer. The Defendants then purportedly order the product from the manufacturer or supplier.

22. The Defendants offer different computer or other product “packages” that vary greatly in price.

23. The Defendants receive a greater amount of net profit overall from “upgrade,” “premier” or “deluxe” packages than “standard” or “basic” packages.

24. All “upgrade,” “premier” or “deluxe packages” contain either more items advertised as “free” or contain merchandise advertised as “free” with a relatively greater value, than the “basic” or “standard” packages. The “upgrade,” “premier,” or “deluxe packages” result in both higher recurring payments and a higher total amount to be paid for the consumer than the “basic” or “standard” packages.

25. The Defendants urge consumers to agree to an “upgrade,” “premier,” or “deluxe” package over the “standard” or “basic” package.

26. Since the company’s inception, BlueHippo has paid for all advertisements. While

most advertisements generically refer to “BlueHippo” without distinguishing between BlueHippo Funding and BlueHippo Capital, some *television* advertisements briefly display that the advertised offer is being made by BlueHippo Capital albeit in extremely small print.⁶

27. The Defendants advertise or have advertised on nationally syndicated television and radio programs and the Internet, which are published, aired, or otherwise accessible to consumers in Tennessee.⁷

28. The Defendants market to consumers who have had credit problems - many of whom are indigent and/or on fixed or limited incomes.

29. The Defendants have described their typical consumer in internal documents as coming from households with a “couple of kids” making \$25,000 per year or less.⁸

30. While the Defendants do advertise across demographic boundaries to reach low-income and credit-challenged consumers, the Defendants also, in some cases, specifically target African-Americans,⁹ Hispanics,¹⁰ and members of the military¹¹ with their advertisements.

31. In addition, the Defendants also specifically market to consumers who do not possess a computer.¹²

32. The Defendants also control and promote their programs via their web sites such

6 Collect. Ex. 32, BH-TV3; Collect. Ex. 32, BH-TV4; Collect. Ex. 32, BH-TV5; Collect. Ex. 32, BH-TV6; Collect. Ex. 32, BH-TV7; Collect. Ex. 32, BH-TV8; Collect. Ex. 32, BH-TV9; Collect. Ex. 32, BH-TV10; Cf., Collect. Ex. 32, BH-TV1 (referencing BlueHippo Funding explicitly).

7 See, e.g., Ex. 60, Aff. of Sarah Reid, at para. 4, Ex. 1, Aff. of Georgia Harper, at para. 4.

8 Ex. 38, BlueHippo Training Manual which states that BlueHippo’s customers are “low and moderate income families (typically \$25K/yr income & less)” and “often have families (a couple of kids isn’t unusual).”

9 See, e.g., Collect. Ex. 32, BH-RA1; Collect. Ex. 32, BH-RA23; Collect. Ex. 32, BH-RA19; Collect. Ex. 32, BH-RA7; Collect. Ex. 32, BH-TV4 (television ad featuring all African-American cast); See also, Ex. 38, BlueHippo’s Training Materials (referencing advertisements on Black Entertainment Television).

10 Collect. Ex. 32, BH-TV5, Collect. Ex. 32, BH-PR48, Collect. Ex. 32, BH-PR58, and Collect. Ex. 32, BH-CL14.

11 Collect. Ex. 32, BH-CL11 (classified ad placed in Military Press).

12 See, e.g., Collect. Ex. 32, BH-RA12 (“If your home doesn’t have a computer . . . Again, this is a special program for homes in need of a new computer.”).

as www.bluehippo.com, www.digitalboulevard.com, www.bigbluead.com, and www.approvalpc.com.

33. The vast majority of the Defendants' print, television, and radio advertisements do not reference or refer consumers to any web site. Instead, these advertisements advise consumers to place orders by telephone through a 1-800 number.

34. Of all of the Defendants' advertisements, excluding classified ads, only the following contain a reference to any of the Defendants' web sites: BH-IN2, BH-PR4, BH-PR103, and BH-PR104.

35. The number of consumers with billing addresses in Tennessee who have placed orders online has been nominal.

36. Generally speaking, the Defendants have repeatedly represented throughout their advertisements that they do not perform credit checks, that consumers are guaranteed to be approved, and that consumers stand to receive designated "free" items as part of their offer.

37. The Defendants' advertisements direct consumers to call a sales representative through a toll-free number.

38. The Defendants' sales representative then purportedly follows a sales script.

39. For telephone orders, prior to receiving any paperwork or other written materials from the Defendants besides any advertisements, the Defendants ask the consumer to verbally enter into a (purportedly) legally binding contract in which an initial "advance"¹³ payment and weekly, biweekly, or monthly payments are deducted electronically from the consumer's checking account through an automated clearinghouse (ACH) or otherwise.

¹³ The first payment is named the "advance" payment despite the fact that all payments in the "layaway" plan are made before receipt of the given product.

40. If the consumer receives any written contractual documents at all,¹⁴ the documents are received only after the consumer's phone conversation with the Defendants' sales representative in which the consumer is asked to verbally assent to a contract.

41. As of November 20, 2007, 3,544 consumers with billing addresses in Tennessee have made at least one payment towards the purchase of a computer or other product from the Defendants.

42. Sales from consumers with billing addresses in Tennessee comprise approximately .875% of all of the Defendants' sales nationwide.¹⁵

43. Since its inception, the Defendants' business can be divided into three distinct periods, which are generally described below.

Pre-March 2006 Business Model

44. Beginning in 2003 and ending around March 2006, consumers called the toll-free number and were connected to a sales representative at BlueHippo.

45. Prior to March 2006, following the order processing call with BlueHippo, a consumer was supposed to receive a fax cover sheet,¹⁶ a cover letter,¹⁷ a "Shipping Verification Form"¹⁸ and a "Revolving Account Agreement."¹⁹

46. Under the pre-March 2006 business model, the consumer was supposed to build up a short payment history before BlueHippo would offer to finance the consumer's remaining balance and approve the product for shipment.

¹⁴ See, e.g., Ex. 4, Aff. of Connie Roberts, at para. 15 ("Furthermore, I have never received any paperwork from BlueHippo nor have I gotten any answers with regards to my ship date."); Ex. 17, Aff. of Deldra Wells, at para. 9 ("I never received any paperwork about the second purchase."); Ex. 27, Aff. of Allen Hubbard, at para. 8.

¹⁵ Ex. 39, Ltr. from Clay Friedman.

¹⁶ Ex. 40, Pre-March 2006 Fax Cover Letter.

¹⁷ Ex. 41, Pre-March 2006 Cover Letter.

¹⁸ Ex. 42, Pre-March 2006 Shipping Verification Form.

¹⁹ Ex. 43, Pre-March 2006 Revolving Account Agreement.

47. Prior to March 2006, BlueHippo offered revolving or “open-end” credit financing.

48. Prior to March 2006, BlueHippo required that consumers sign a separate financing agreement in order for their computer to be shipped to them.

49. BlueHippo’s pre-March 2006 advertising, marketing and other materials did not reference the term “layaway” or a word or phrase of similar import.

50. Prior to March 2006, BlueHippo described itself as solely a financing company for consumers.

51. BlueHippo stated prior to and shortly after March 2006, the following, in relevant part: Our Company

BlueHippo Funding was founded in 2003 to provide an effective alternative for people with limited *financing options* due to less than perfect credit or no credit at all. Since its founding, BlueHippo® has quickly grown into one of the largest and most innovative *specialty finance companies* in the country, *helping consumers finance the products they want and need*.²⁰

BlueHippo provides *affordable computer financing*.²¹

Affordable Computer Financing Guaranteed.²²

Q: Who is BlueHippo® Funding?

A: BlueHippo Funding, LLC is one of the fastest growing *consumer finance companies* in the country, helping thousands of callers a day *finance the products they want and need*. . . .²³

Since we can approve you regardless of your past credit history, we do require that all of our customers have a checking account and a home phone number. *It is the only way that we can offer this*

20 <http://web.archive.org/web/2006040223450/www.bluehippo.com/aboutUs.asp> (last visited June 12, 2008); <http://web.archive.org/web/20060526114426/www.bluehippo.com/aboutUs.asp> (last visited June 12, 2008) (Emphasis added).

21 <http://web.archive.org/web/20030723173959/http://bluehippo.com/> (last visited June 12, 2008) (Emphasis added).

22 Collect. Ex. 32, BH-PR1; Collect. Ex. 32, BH-PR2 (Emphasis added).

23 http://web.archive.org/web/20060406152111/www.bluehippo.com/ourProgram_FAQ.asp (last visited June 12, 2008) (Emphasis added).

*financing opportunity without a more extensive application process.*²⁴

If you would like *to finance* a computer through BlueHippo, then all you need to do is go down to your local bank and set up a checking account. In most cases, it is free and easy to set up.²⁵ (Emphasis added).

52. From 2003 until around June 2006, unless the consumer asked for a refund within seven days of making the order, all payments made were non-refundable under the pre-March 2006 model.

53. The seven-day refund policy was a hidden policy and not disclosed, much less clearly and conspicuously, in any of BlueHippo's pre-March 2006 sales scripts, advertisements, or other documents distributed to consumers.

The "Layaway" and "Open-End" Financing Model

54. Beginning around March 2006 and lasting until late 2006,²⁶ consumers were supposed to receive a cover letter,²⁷ "Layaway Agreement,"²⁸ "Layaway Shipping Verification Form,"²⁹ "Layaway Credit Offer Letter,"³⁰ and a "Post-Layaway Revolving Charge Agreement"³¹ following an order.

55. Beginning in March 2006, BlueHippo modified its original business model to one in which consumers purchased products from BlueHippo Capital pursuant to a "layaway" plan.

56. Beginning in March 2006, BlueHippo Capital, through its sales representatives,

24 Ex. 44, Pre-March 2006 Sales Script, at 3 (Emphasis added); See also, Ex. 54, March 2006 to Late 2006 Layaway Sales Script, at 3 (using same language).

25 Ex. 44, Pre-March 2006 Sales Script, at 3 (Emphasis added).

26 The general time frame March 2006 to late 2006 is the time frame for this business model given to us by BlueHippo's counsel.

27 Ex. 45, March 2006 to Late 2006 Cover Letter.

28 Ex. 45, March 2006 to Late 2006 Cover Letter.

29 Ex. 47, March 2006 to Late 2006 Shipping Verification Form.

30 Ex. 48, March 2006 to late 2006 Layaway Credit Offer Letter.

31 Ex. 49, March 2006 to late 2006 Post-Layaway Revolving Charge Agreement.

began accepting incoming calls from the toll-free number.

57. Beginning around June 2006 and lasting until late 2006, the Defendants instituted a new refund policy whereby they purportedly refunded all payments less a \$175.00 “early termination” fee any time prior to shipment of the product if the consumer sent in a written notice of cancellation.

Current Business Model

58. In late 2006 and continuing to present, the Defendants changed their business model in two aspects: the Defendants went solely to a “closed-end” rather than “open-end” credit format and again changed its refund policy back to no cash refunds - instead only offering “store credit” at the Defendant’s web site “store.”

59. Aside from computer monitors, plasma televisions, and computers, the Defendants have only recently offered phone cards and various other branded-merchandise that feature a prominent image of the Defendants’ cartoon mascot or the Defendants’ logo as merchandise that can be redeemed with store credit.

60. The welcome package under the current business model includes a cover letter,³² a “Layaway Agreement,”³³ a Shipping Verification Form,³⁴ and a “Retail Installment Contract.”³⁵

UNLAWFUL MARKETING OF ITEMS AS “FREE”

61. The Defendants, throughout each business model, have consistently advertised merchandise as “free” in conjunction with their offers for computers and other products, and have consistently failed to disclose or clearly and conspicuously disclose statutorily required

32 Ex. 50, Current Cover Letter.

33 Ex. 51, Current Layaway Agreement.

34 Ex. 52, Current Sales Order Form.

35 Ex. 53, Current Retail Installment Contract.

information about such promotional offers. In addition, the Defendants have also deliberately and falsely represented that select products came “free” with all orders throughout all of their business models.

Background on “Free” Advertising Claims

62. Like the computers and other products the Defendants offer, the merchandise advertised as “free” is not owned, possessed, or shipped by the Defendants. Instead, this merchandise is owned, possessed, and shipped by third-party manufacturers, suppliers, or other retailers.

63. The Defendants incorporate their cost for the “free” promotional items into the total price paid by the consumer for the computer or other product.

64. The cost of the “free” promotional items that is paid by Defendants is incorporated into the total price paid by the consumer for the computer or other product.

65. The Defendants incorporate a certain profit for promotional items into the total price paid by the consumer for the Defendants’ product.

66. The Defendants have explicitly included, albeit inadequately, contractual terms concerning their “free” items in each offer they have made to consumers with billing addresses in Tennessee.

67. The Defendants’ contractual documents state, albeit inadequately, that receipt of the “free” items is conditioned on the consumer paying the full amount due on a given purported contract.

68. BlueHippo’s “Revolving Account Agreement” used prior to March 2006 stated the following, in relevant part:

PAYMENT AS AGREED. Provided you have made all of

payments as agreed and have not been in Default at any time, you will be shipped any free items indicated on your Shipping Verification Form . . .

69. The Defendants' "Layaway Agreement" used from March 2006 until late 2006 stated the following in relevant part:

11. SPECIAL PROMOTIONS: Any special promotions, rebates or free items (cash or other) included in your purchase are provided contingent upon your Account not going into default. Cash disbursements will be paid upon your balance being paid in full and your Account not going into Default status at any time between your purchase date and your final payment, whether financed or not. If your Account goes into Default, at any time, you may be required to pay for those promotional free items and they will be added to your principal. . . .

70. The Defendants' "Revolving Charge Agreement" used from March 2006 until late 2006 stated the following in relevant part:

10. SPECIAL PROMOTIONS: Any special promotions, rebates or free items (cash or other) included in your purchase are provided contingent upon your Account not going into Default status at any time between your purchase date and your final payment, whether financed or not. If your Account goes into Default, at any time, you may be required to pay for those promotional free items and they will be added to your principal or you may become ineligible to receive these items, discounts or rebates. . . .

71. Since late 2006 under the current business model, the Defendants have stated on their "Layaway Terms and Conditions" Form, the following, in relevant part:

I have purchased a brand new [computer] which includes the FREE color printer and the FREE 20-inch LCD television which I will receive after I've made all 26 payments as agreed.

72. Since late 2006 under the current business model, the Defendants have stated on their "Additional Provisions" attachment to their "Retail Installment Contract," the following in relevant part:

SPECIAL PROMOTIONS: Any special promotions, rebates or free items (cash or other) included in your purchase of the Property are provided contingent upon this Contract not going into default at any time between your purchase date and your final payment and you will receive them after all payments have been made. If this Contract goes into default at any time, you may be required to pay for those promotional free items and they will be added to the Amount Financed or you may become ineligible to receive these items, discounts or rebates. . . .

73. The Defendants have listed items as “free” in the following or substantively similar manner on their sales order forms though the amounts quantified in dollars, merchandise advertised as “free,” and the product type vary by consumer:

Qty	Product	Unit Price
1	Desktop 2005 E	\$1,970.48
1	Upgrade Pack 1	\$415.48
1	TV and Printer Bundle	FREE
Subtotal:		\$2,385.96
Sales Tax:		\$0.00
Shipping:		\$0.00
Mail-in Rebate:		-(\$900.00)
Computer System Total:		\$1,485.96

74. All televisions, cameras, printers, and any other item advertised as “free” by the Defendants have been promotions to induce the consumer to buy a computer or other product from the Defendants.

75. All televisions, cameras, printers, and any other item represented as “free” in conjunction with an offer to buy a computer or other product by the Defendants, had, at the time the advertisement was made and thereafter, some value regardless of the size or amount of that value.

76. The Defendants have referenced these items advertised as “free” in their own contractual documents under the heading “special promotions.”

77. The prospect of receiving these “free” promotional items have induced many consumers to buy a computer or other product from the Defendants.³⁶

78. The Defendants have also separately billed consumers for shipping on items represented as “free”³⁷ without the charge being previously clearly and conspicuously disclosed.

Falsely Representing “Free” Merchandise on All Orders

79. Throughout all of their business models, the Defendants have falsely represented that consumers would receive select “free” merchandise with any order.

80. BlueHippo’s offer of the “free” printer appeared with no qualification other than at most the phrase “with paid purchase,” “when you order within seven days,” or words of similar import, in BH-PR11, shown below, and the following advertisements that aired or were originally published prior to March 2006:³⁸

BH-CL12, BH-TV3, BH-PR3, BH-PR4, BH-PR5, BH-PR6, BH-PR7, BH-PR8, BH-PR9, BH-PR12, BH-PR13, BH-PR14, BH-PR15, BH-PR16, BH-PR17, BH-PR18, BH-PR19, BH-RA23, BH-RA24, BH-RA25, BH-RA26, BH-RA27, BH-RA28, BH-RA29, BH-RA30, BH-RA32, BH-RA33, BH-RA34, BH-RA35, BH-RA36, BH-RA44, BH-RA59, BH-RA60, BH-RA6, BH-IN1, and BH-IN2.

36 Ex. 28, Aff. of Joe Ann Qualls at para. 7; Ex. 29, Aff. of Robert Hughes at para. 7; Ex. 7, Aff. of Billy Shane Bowling at para. 7 (citing payment plan and “free” items); Ex. 30, Aff. of Rosie Cannon at para. 7; Ex. 13, Aff. of Angela Ard at para. 7; Ex. 31, Aff. of Thelma Harrison at para. 7; Ex. 16, Aff. of Rebecca Good at para. 7; Ex. 17, Aff. of Deldra Wells at para. 7; Ex. 19, Aff. of Linda Taylor, at para. 7.; Ex. 21, Aff. of James Robertson, at para. 7; See also, Ex. 27, Aff. of Allen Hubbard, at para. 7; Ex. 30, Aff. of Rosie Cannon, at para. 7.

37 This was represented to the State by out-of-state counsel.

38 Ex. 29, Aff. of Robert Hughes, at para. 9 (“I thought I would get the free merchandise after six weeks of payments.”)



81. Yet, BlueHippo's pre-March 2006 sales script makes clear that the “free” color printer only came with a higher priced purchase.

82. BlueHippo's pre-March 2006 sales script states the following in relevant part:

[Consumer first name], let me tell you about our best selling Deluxe Package.

Here's what you'll get - a brand new desktop with:

- An Intel 2.66 Gigahertz processor,
- 256 megs of RAM
- An 80 gig hard drive
- A CD Rom drive with a CD burner
- A 17 inch color monitor
- Microsoft Windows XP
- And a 3 year warranty with free tech support

[Consumer first name], let me tell you about your new laptop package. It's perfect for business travelers or students on the go.

It comes with:

- a brand new, 2005 Gateway laptop system,
- a superfast 1.4 Gigahertz Intel Celeron Mobile processor
- 256 megs of Ram,
- a 40 gig hard drive,
- a CD Burner,
- a DVD Drive,
- a 1-year warranty and free tech support

- and a free color printer

83. The Defendants continued to represent that consumers would stand to receive select “free” merchandise with any order, when this was not the case from March 2006 until late 2006.

84. Specifically, the offer of the “free” television appeared with no qualification other than at most the phrase “with paid purchase,” “order within seven days,” “for a limited time,” or words of similar import, in BH-PR33, shown below, and the following advertisements, which or were originally published from March 2006 to the end of the year 2006:

BH-PR20, BH-PR21, BH-PR22, BH-PR23, BH-PR24, BH-PR25, BH-PR26, BH-PR27, BH-PR28, BH-PR29, BH-PR30, BH-PR31, BH-PR32, BH-PR34, BH-PR35, BH-PR36, BH-PR37, BH-PR38, BH-PR39, BH-PR40, BH-PR41, BH-PR42, BH-PR43, BH-PR44, BH-PR45, BH-PR46, BH-PR47, BH-PR48, BH-PR49, BH-RA37, BH-RA38, BH-RA39, BH-RA40, BH-RA41, BH-RA42, BH-RA43, BH-RA45, BH-RA46, BH-RA47, BH-RA48, BH-RA49, BH-RA50, BH-RA51, BH-RA52, BH-RA54, BH-RA55, BH-RA56, BH-RA59, BH-RA60, BH-RA61, and BH-TV4.

Guaranteed Approval

BlueHippo® guarantees your approval for a new, brand-name computer regardless of your credit history. You can pay by the week, all you need is a checking account!

Plus, FREE when you order in the next seven (7) days.

•20 inch LCD Television •Color Printer

Call 1-800-773-0687 today.

85. The offer of the “free” digital camera appeared with no qualification other than the phrase “with paid purchase” or words of similar import, in the following advertisements, which aired or were originally published from March 2006 to the end of the year 2006: BH-PC1, shown below, and BH-PC2.



86. Nowhere in these advertisements or any other advertisements is it disclosed that the consumer would have to purchase one of the Defendants' higher priced “upgraded” computer packages, which usually cost \$39.99 per week for a year rather than \$29.99 per week for a year for a “standard” or “basic” package, to receive the “free” television or digital camera.

87. Under the March 2006 to late 2006 sales script, if the consumer indicated that they were not interested when asked, “Would you like me to include the color printer, complete software package, and the flat screen LCD TV absolutely FREE with your order?” after hearing about the Defendants' \$39.99 a week package, the Defendants' representative was supposed to respond with the following:

Maybe I didn't explain something correctly - are you sure you don't want this deal? Because this is one of those all around great deals.

I talk to **a lot** of people all day long and I must say, almost everybody wants a printer with their computer, but this way you're getting a printer, a ton of software, and a brand new 20 inch LCD TV that you can hang anywhere in your home.

When you think about how much you're getting - a fast computer, lots of extra storage space for pictures or music, extra memory that makes all of your programs faster, plus the color printer, software and the LCD television - this is a no brainer.

Can't I set you up with a new computer today?³⁹

88. Under the March 2006 to late 2006 sales script if the consumer again stated that they were not interested, the Defendants' representative was instructed to say the following, in relevant part:

I understand what you're saying, we have another computer model that might be a better fit for you, it's our Basic Package and it's only \$29.99 a week.

It's a **brand new** desktop and comes with:

- C An Intel 2.66 Gigahertz processor,
- C 256 megs of Ram,
- C a 40 gig hard drive,
- C a CD Rom drive,
- C a 17 inch color monitor,
- C Microsoft Windows XP [sic]
- C and a 1-year warranty WITH free tech support [sic]

Of course, it doesn't come with the \$300 rebate, the software, or the FREE LCD TV, but I can include a FREE color printer and the CD burner if you'd like.

Would you prefer this one *or the Deluxe Package with the rebate, software and FREE LCD TV we spoke about earlier?*⁴⁰

39 Ex. 54, March 2006 to Late 2006 Layaway Sales Script, at 10 (Emphasis in original).

40 Ex. 54, March 2006 to Late 2006 Layaway Sales Script, at 11 (Bold in original, italicized emphasis added).

89. Likewise, BH-PR100, shown below, and the following advertisements, which ran (and in some cases continue to run) beginning in January 2007, represented, without qualification other than at most the phrase “with paid purchase,” “for a limited time,” or term or phrase of similar import, that a “free” digital camera or a flat screen television was included with every order:

BH-PR50, BH-PR51, BH-PR52, BH-PR53, BH-PR54, BH-PR55, BH-PR56, BH-PR57, BH-PR58, BH-PR59, BH-PR60, BH-PR61, BH-PR62, BH-PR63, BH-PR64, BH-PR65, BH-PR66, BH-PR67, BH-PR68, BH-PR69, BH-PR70, BH-PR71, BH-PR72, BH-PR73, BH-PR74, BH-PR75, BH-PR76, BH-PR77, BH-PR78, BH-PR81, BH-PR82, BH-PR83, BH-PR84, BH-PR85, BH-PR86, BH-PR87, BH-PR88, BH-PR89, BH-PR96, BH-PR97, BH-PR98, BH-PR99, BH-PR100, BH-PR101, BH-PR102, BH-PR103, BH-PR104, BH-PR105, BH-PR106, BH-PR107, BH-PR108, BH-PR109, BH-PR110, BH-PR111, BH-PR112, BH-PR113, BH-RA58, BH-RA62, BH-RA63, BH-RA64, BH-RA65, BH-RA66, BH-RA67, BH-RA68, BH-RA69, BH-RA70, BH-RA71, BH-RA72, BH-RA73, BH-RA74, BH-RA75, BH-RA76, BH-RA77, BH-RA78, BH-RA79, BH-RA80, BH-RA81, BH-RA82, BH-RA83, BH-RA85, BH-RA86, BH-RA87, BH-RA88, BH-RA89, BH-RA90, BH-RA91, BH-RA92, BH-RA93, BH-RA97, BH-PC3, BH-TV6, BH-TV7, and BH-TV9.

GUARANTEED APPROVAL

For A Brand New Computer No Matter What Your Credit Looks Like

BlueHippo finances thousands of computers to people with past credit problems. So it doesn't matter if you have bad credit, past bankruptcies or unpaid bills because BlueHippo doesn't even check your credit. Call now at **1-800-533-0971**.

FREE 

FREE 

GET A FREE TV CALL NOW

We will also send you an ultra thin LCD TV plus a color printer **FREE** with paid purchase.

Call **BlueHippo**® TODAY!
1-800-533-0971 



90. Under the current business model, in spite of the sweeping statements contained in the Defendants' advertisements, the Defendants have only included the "free" LCD television and digital camera if the consumer purchased a more costly package, usually \$39.99 per week for a year rather than \$29.99 per week for a year.

91. The current sales script differentiates between the lower price "Deluxe" package and the higher priced "Premier" package. The sales script states as follows, in relevant part:

[First name] For your needs I'm going to recommend our Deluxe Package. It comes with everything you need - plus a little extra.

You'll get -

- C A brand new Dell desktop with an Athlon 3200 + processor - so you know it's fast
- C 512 megs of Ram
- C An 80 gig hard drive - to store thousands of

- songs and photos
- C A CD Rom drive with CD burner
- C A 15 inch flat panel LCD monitor
- C The all new Microsoft Vista operating system
- C And this system comes with a 1 year in-home warranty. . . .

Now [First Name] the Deluxe Package sells for only \$99 down - which doesn't have to be paid today - and \$29.99 a week for 52 weeks.

There is absolutely no credit check and provided you make your payments as agreed, your new computer is just \$1,259 - after the activation payment and the \$300 mail-in rebate - and your payments even include taxes, shipping and handling.

[First name] I'll tell you how we can make your deal even better ... *I can upgrade you today to our best selling Premier Package. It comes with a faster processor, a bigger 19 inch LCD monitor and a CD-ROM and DVD Burner. It also comes with a FREE color printer and a FREE digital camera once you have paid in full for your order as agreed.*

*Would you like me to include the FREE color printer and FREE digital camera with your upgrade?*⁴¹

Advertising Merchandise as "Free" Without Statutorily Required Information

92. The Defendants have represented that select merchandise was "free" pervasively in their advertisements, including, but not limited to the following statements:

Call now and we'll include a free color printer, a free 20-inch LCD TV, and a one year warranty absolutely free.⁴²

Look at What You Get FREE! We will also send you an ultra-thin LCD TV plus a color printer FREE with paid purchase.⁴³

⁴¹ Ex. 55, Current Sales Script, at 7 (Emphasis added).

⁴² Collect. Ex. 32, BH-RA64.

⁴³ Collect. Ex. 32, BH-PR101; Collect. Ex. 32, BH-PR63; Collect. Ex. 32, BH-64; Collect. Ex. 32, BH-PR65; Collect. Ex. 32, BH-82 (Emphasis in original).

GET A FREE TV CALL NOW[,] We will also send you an ultra-thin 20-inch LCD TV plus a color printer FREE with paid purchase.⁴⁴

Want a FREE 20-inch LCD TV?⁴⁵

Get a FREE LCD TV & Color Printer⁴⁶

GET A FREE TELEVISION CALL NOW! We'll send you an ultra-thin LCD TV plus a color printer FREE with your paid purchase.⁴⁷

GET A FREE DIGITAL CAMERA & PRINTER[,] We will also send you a digital camera plus a color printer FREE with paid purchase.⁴⁸

Look What You Get FREE! We will also send you a digital camera plus a color printer FREE with paid purchase.⁴⁹

GET A FREE DIGITAL CAMERA & COLOR PRINTER CALL NOW[,] We will also send you a digital camera plus a color printer FREE with paid purchase.⁵⁰

GET A FREE DIGITAL CAMERA[,] We will also send you a digital camera plus a color printer with paid purchase.⁵¹

Call now and we'll include a free color printer, a free 20-inch LCDTV, and a 1 year warranty - absolutely free!⁵²

Call now and BlueHippo will give you a free 1-year warranty, free color printer and a free 20-inch LCD TV with your paid purchase.⁵³

For a limited time, we'll throw in a free 20-inch flat panel TV with

44 Collect. Ex. 32, BH-PR52; Collect. Ex. 32, BH-PR60; Collect. Ex. 32, BH-61; Collect. Ex. 32, BH-PR66; Collect. Ex. 32, BH-PR76; and Collect. Ex. 32, BH-PR78 (Emphasis in original).

45 Collect. Ex. 32, BH-PR61 (Emphasis in original).

46 Collect. Ex. 32, BH-PR62 (Emphasis in original).

47 Collect. Ex. 32, BH-PR81 (Emphasis in original).

48 Collect. Ex. 32, BH-67; Collect. Ex. 32, BH-PR69 (Emphasis in original).

49 Collect. Ex. 32, BH-PR68; Collect. Ex. 32, BH-PR72; Collect. Ex. 32, BH-PR73 (Emphasis in original).

50 Collect. Ex. 32, BH-PR70; Collect. Ex. 32, BH-PR75 (Emphasis in original).

51 Collect. Ex. 32, BH-PR71 (Emphasis in original).

52 Collect. Ex. 32, BH-RA64.

53 Collect. Ex. 32, BH-RA65; Collect. Ex. 32, BH-RA71.

built in tuner and speakers . . . plus a color printer - all free with your paid order.⁵⁴

Even better we'll throw in a free ultra-thin flat panel TV . . . and we'll include a free color printer and a 1-year warranty absolutely free.⁵⁵

We'll even include a free 1-year warranty, a free color printer, and a free LCD flat screen TV . . . And with your paid order, we'll even throw in a free 1-year warranty a free color printer, and a free LCD flat screen TV.⁵⁶

And if you call now we'll even include a free 1-year warranty on your new laptop, along with a free color printer and a free LCD flat screen TV . . . And if you call now we'll throw in a free 1-year warranty, a free color printer, and a free LCD flat screen TV - all with your paid order.⁵⁷

We'll include a free flat panel TV with built in tuner and speakers . . . plus a color printer - all free with your paid order.⁵⁸

Gratis Televisión LCD de 20"[,] Gratis Impresora de Color, Gratis Curso de Ingles⁵⁹

Order today and get a LCD TV and color printer - free.⁶⁰

And if you order now we'll send you a free color printer and a free flat screen TV . . . So to be clear, when you order today, you can get your choice of a brand new desktop or laptop with tons of great software plus a free color printer and a free LCD TV.⁶¹

Call now to get the computer you need regardless of your credit plus two free gifts with order.⁶²

54 Collect. Ex. 32, BH-RA81.

55 Collect. Ex. 32, BH-RA82.

56 Collect. Ex. 32, BH-RA86.

57 Collect. Ex. 32, BH-RA87.

58 Collect. Ex. 32, BH-RA88.

59 Collect. Ex. 32, BH-TV5.

60 Collect. Ex. 32, BH-TV6.

61 Collect. Ex. 32, BH-TV9.

62 Collect. Ex. 32, BH-TV7.

Failing to Clearly and Conspicuously Disclose the Verifiable Retail Price of Each Inducement

93. BH-PR34, shown below, and the following advertisements used by the Defendants reference at least one item as “free:”

BH-CL3, BH-CL4, BH-CL5, BH-CL6, BH-CL7, BH-CL8, BH-CL10, BH-CL11, BH-CL12, BH-CL13, BH-CL14, BH-IN1, BH-IN2, BH-PC1, BH-PC2, BH-PC3, BH-PR3, BH-PR4, BH-PR5, BH-PR6, BH-PR7, BH-PR8, BH-PR9, BH-PR10, BH-PR11, BH-PR12, BH-PR13, BH-PR14, BH-PR15, BH-PR16, BH-PR17, BH-PR18, BH-PR19, BH-PR20, BH-PR21, BH-PR22, BH-PR23, BH-PR24, BH-PR25, BH-PR26, BH-PR27, BH-PR28, BH-PR29, BH-PR30, BH-PR31, BH-PR32, BH-PR33, BH-PR35, BH-PR36, BH-PR37, BH-PR38, BH-PR39, BH-PR40, BH-PR41, BH-PR42, BH-PR43, BH-PR44, BH-PR45, BH-PR46, BH-PR47, BH-PR48, BH-PR49, BH-PR50, BH-PR51, BH-PR52, BH-PR53, BH-PR54, BH-PR55, BH-PR56, BH-PR57, BH-PR58, BH-PR59, BH-PR60, BH-PR61, BH-PR62, BH-PR63, BH-PR64, BH-PR65, BH-PR66, BH-PR67, BH-PR68, BH-PR69, BH-PR70, BH-PR71, BH-PR72, BH-PR73, BH-PR74, BH-PR75, BH-PR76, BH-PR77, BH-PR78, BH-PR81, BH-PR82, BH-PR83, BH-PR84, BH-PR85, BH-PR86, BH-PR87, BH-PR88, BH-PR89, BH-PR90, BH-PR92, BH-PR96, BH-PR97, BH-PR98, BH-PR99, BH-PR100, BH-PR101, BH-PR102, BH-PR103, BH-PR104, BH-PR105, BH-PR106, BH-PR107, BH-PR108, BH-PR109, BH-PR110, BH-PR111, BH-PR112, BH-PR113, BH-RA13, BH-RA14, BH-RA15, BH-RA16, BH-RA19, BH-RA20, BH-RA21, BH-RA22, BH-RA23, BH-RA23, BH-RA24, BH-RA25, BH-RA26, BH-RA27, BH-RA28, BH-RA29, BH-RA30, BH-RA32, BH-RA33, BH-RA34, BH-RA35, BH-RA36, BH-RA37, BH-RA38, BH-RA39, BH-RA40, BH-RA41, BH-RA42, BH-RA43, BH-RA44, BH-RA45, BH-RA46, BH-RA47, BH-RA48, BH-RA49, BH-RA50, BH-RA51, BH-RA52, BH-RA53, BH-RA54, BH-RA55, BH-RA56, BH-RA57, BH-RA58, BH-RA59, BH-RA60, BH-RA61, BH-RA62, BH-RA63, BH-RA64, BH-RA65, BH-RA66, BH-RA67, BH-RA68, BH-RA69, BH-RA70, BH-RA71, BH-RA72, BH-RA73, BH-RA74, BH-RA75, BH-RA76, BH-RA77, BH-RA78, BH-RA79, BH-RA80, BH-RA81, BH-RA82, BH-RA83, BH-RA84, BH-RA85, BH-RA86, BH-RA87, BH-RA88, BH-RA89, BH-RA90, BH-RA91, BH-RA92, BH-RA93, BH-RA95, BH-RA96, BH-RA97, BH-TV2, BH-TV3, BH-TV4, BH-TV5, BH-TV6, BH-TV7, BH-TV8, BH-TV9, and BH-TV10.

**Get a new computer
(no credit check)**

FREE! **FREE!** **FREE!** **FREE!**

Get your brand new, computer now...

...Even if you have bad credit or no credit at all! Thousands of families are enjoying new computers because they called BlueHippo®! We'll help you too! Just give us a call at 800-372-0149.

We Don't Care About Your Credit Rating!
Hard to believe? Believe it! When you buy your new computer from BlueHippo®, we won't check your credit—we don't care what it is. All you need is an active checking account.

A Computer with Everything You Need Sent To Your Door!
We'll send a brand new state-of-the-art PC, fully-loaded with everything you need—Intel® processor, tons of storage space, loads of memory, and a 3 year warranty!

PLUS - Look What You Get FREE! Order in the next 7 days and we'll also send you a 20 inch LCD Television and a Color Printer—ABSOLUTELY FREE!

Call BlueHippo® today! The call is FREE!
1-800-372-0149

A brand new computer is waiting for YOU!

94. Of all of the advertisements used by the Defendants that represent promotional items as “free,” only the following reference any value for items listed as “free:”

BH-PR4, BH-PR6, BH-PR9, BH-PR13, BH-PR14, BH-PR15, BH-PR16, BH-PR20, BH-PR24, BH-PR25, BH-PR26, BH-PR27, BH-RA17, and BH-RA47.

95. In each of these advertisements contained in paragraph 94, the value assigned to the merchandise advertised as “free” is for a group of products rather than listed for each specific item represented as “free.”

96. The following advertisements used by the Defendants represent a \$500 value for at least two items advertised as “free:” BH-PR4, BH-PR6, BH-PR9, BH-PR13, BH-PR14, BH-PR15, BH-PR16, BH-PR20, BH-PR24, BH-PR25, BH-PR26, and BH-PR27.

97. In BH-RA17, the software package, consisting of many different programs, applications and games, is represented as having a \$750.00 value.

98. In BH-RA47, the software package, consisting of many different programs, applications and games is represented as having a \$700.00 value.

99. None of the Defendants' advertisements that list at least one item as "free" provides a verifiable retail price for each item advertised as "free."

100. Excluding software, none of the Defendants' sales scripts, sales orders, sales verification forms, fax cover sheets, cover letters, "layaway" agreements, financing agreements, websites, or any other materials distributed or otherwise available to consumers with billing addresses in Tennessee, in the past or at present, disclose *a value of each item* represented or advertised as "free."

101. Excluding software, none of the Defendants' sales scripts, sales orders, sales verification forms, fax cover sheets, cover letters, "layaway" agreements, financing agreements, websites, or any other materials distributed or otherwise available to consumers with billing addresses in Tennessee, in the past or at present, disclose *the verifiable retail value of each item* represented or advertised as "free."

102. The Defendants have never maintained or collected the retail value of any of the products they advertised as "free."

103. In addition, with the exception of postcard mailers, none of the Defendants' advertisements, in the past or at present, clearly and conspicuously disclose the Defendants' street address.⁶³

104. BH-TV3 and BH-TV9 list BlueHippo Capital's street address in the disclosure box referenced in paragraph 109 below, which is formatted in small font and flashed on the

⁶³ See, e.g., Ex. 24, Aff. of Karen Williams, at para. 11. See also, Ex. 23, Aff. of Carl Lewis, at para. 13 ("I could not even get a BlueHippo employee to tell me where BlueHippo is located.").

screen for less than five seconds. BH-TV3 and BH-TV9 do not list the street address clearly and conspicuously.

Failing to the Clearly and Conspicuously Disclose the Approximate Total of All Costs, Fees or other Monetary Obligations That Must Be Satisfied Before the Consumer Is Entitled to Receive the "Free" Merchandise Offered

105. None of the Defendants' advertisements, in the past or at present, clearly and conspicuously disclose an approximate total of all costs, fees, or other monetary obligations that must be satisfied before the consumer is entitled to receive the "free" merchandise offered under either the layaway or financing plan.⁶⁴

106. None of the Defendants' advertisements that were available when the Defendants represented items as "free," clearly and conspicuously disclose the cost, price, approximate cost, or approximate price associated with any of their offers.

107. None of the Defendants' advertisements that were available when the Defendants represented items as "free," clearly and conspicuously disclose the interest rate, either as an annual percentage rate ("APR") or by some other format, that the consumer would be charged under the Defendants' financing agreement.

108. The only advertisements that reference a "total price" of the product offered are BH-TV3, BH-TV5, and BH-TV9. BH-TV3, BH-TV5, and BH-TV9 do not disclose the approximate total of all costs in a clear and conspicuous manner.

109. These advertisements, BH-TV3 and BH-TV9, flash the following statement on the screen for less than five seconds in small print:

⁶⁴ Ex. 19, Aff. of Linda Taylor, at paras. 8-9 ("Furthermore, I never learned the total price of the computer I was buying.") ("I was under the impression that my weekly payment of \$41.98 was actually a monthly payment. This was important to me because I am on a limited income. When I realized how much I would be paying a month and that I would not be able to afford the computer, I wanted to cancel the program. When I called BlueHippo they told me that since I was under the terms of a contract, I was not eligible for a refund and that I would have to pay for the computer. In order to make ends meet and afford the computer, I had to cut spending on groceries.")

This offer is from BlueHippo Capital, LLC (8000 Towers Crescent Drive, 13th floor, Vienna, Virginia 22182). Payments start as low as \$24.99 a week and depend on the computer model purchased. A \$99 initial fee applies. Advertised model is available for initial fee plus weekly layaway payments of \$39.99 for 52 weeks. *Total price of advertised model, including shipping and handling is \$1,799.48 after \$300 mail-in rebate and initial payment.* Financing may be available for customers who make 13 consecutive payments. Separate terms and conditions apply for financing offer. Products ship after all payments are made, or at time of financing for eligible customers. Please allow 2-3 weeks for ordering and shipping. No cash refunds will be given; customers canceling prior shipment will be given store credit at BlueHippo.com. All payments are non-refundable. Free items are only provided to customers that pay as agreed. Must be 18 years or older and have an active checking account.

(Emphasis added). BH-TV5 is a Spanish language ad which translated states the following:

This offer is from BlueHippo Capital, LLC (3690 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89106). Payments can be from \$24.99 per week depending on the model of the purchased computer. An activation fee of \$99 applies. The advertised model is available with an activation fee plus weekly installments of \$39.99 for 52 weeks. *The total price of the advertised mode, including shipping and handling, is \$1799.48, after the rebate by mail.* Financing is available for customers who make 6 on-time payments. Different terms and conditions apply to the financing offer. Products are sent only after all payments are made or when financing is determined, for eligible customers. A charge of \$175 applies for early payments. After the product is sent, payments cannot be refunded. Free items are only provided to customers who have paid accordingly.

110. Advertisements BH-TV4, BH-TV6, BH-TV7, BH-TV8, and BH-TV10 contain a “disclosure box” similar to the one described above, but are completely illegible in the format presented.

Misrepresenting the Total Price Consumer Will Pay

111. Aside from omitting any clear and conspicuous reference to price from their advertisements, the Defendants have actively misrepresented the total purchase price the consumer stands to pay for a given product.⁶⁵

112. Prior to March 2006, BlueHippo actively misrepresented the total price the consumer would pay for the product during the time that BlueHippo required consumers to sign its financing agreement.⁶⁶

113. In BlueHippo's Pre-March 2006 sales script, BlueHippo stated the following, in relevant part:

All it takes is a small \$99.00 down payment - which doesn't have to be paid today - and then just 35.99 a week for 52 weeks. There is absolutely no credit check and provided you make your payments as agreed, your new computer is just \$1,971 - and your payments even include taxes, shipping and handling.⁶⁷

and later:

You have also given us the ok to then draft 52 consecutive weekly payments of \$35.99 beginning on Monday, October 30, 2006 drafting on Mondays until you have paid in full - at which point your new computer system including software and accessories will be just \$1,971.⁶⁸

114. The \$1,971 quoted figure does not include the 14.9% APR interest rate BlueHippo charged pursuant to its required financing agreement and is instead a figure rounded

65 Ex. 18, Aff. of Christine Pruitt, at para. 11 ("However, in the first payment, BlueHippo deducted \$125.00. When I called about the difference, they told me that this was for the software bundle, which I thought was free and included in my package.")

66 See also, Ex. 17, Aff. of Deldra Wells, at para. 9. ("The [BlueHippo] representative never told me how many payments I would need to make before I received my computer. I never received any paperwork about the second purchase.")

67 Ex. 44, Pre-March 2006 Sales Script, at 7.

68 Ex. 44, Pre-March 2006 Sales Script, at 25.

up to the nearest dollar amounting to \$35.99 times fifty-two weekly payments plus the \$99.00 initial payment.

115. The Defendants actively misrepresented the total price the consumer would pay for their product under the March 2006 to late 2006 “Layaway” business model.

116. The Defendants stated in their March 2006 to late 2006 “Layaway” sales script, the following, in relevant part:

Great [first name], let me tell you how the program works.

All it takes is a small \$99.00 activation payment - which doesn't have to be paid today and then just \$39.99 a week for 52 weeks. There is absolutely no credit check and provided you make your payments as agreed, your new computer is just \$1,779 - after the \$300 mail-in rebate - and your payments even include taxes, shipping and handling.⁶⁹

117. The statement, “There is absolutely no credit check and provided you make your payments as agreed, your new computer is just \$1,779 - after the \$300 mail-in rebate . . .” misleads consumers as to the total cost the consumer stands to pay in that the figure does not include the \$99.00 activation payment or any interest, should the consumer choose to finance their product.

118. The parallel statement, “Advertised model is available for initial fee plus weekly layaway payments of \$39.99 for 52 weeks. Total price of advertised model, including shipping and handling is \$1,799.48 after \$300 mail-in rebate and initial payment,” that appeared in BH-TV3 and BH-TV9 is also false and misleading in that it does not include the \$99.00 activation payment, other initial fee, or any interest.

119. During the March 2006 to late 2006 business model, the Defendants also never

⁶⁹ Ex. 49, March 2006 to Late 2006 Layaway Sales Script, at 8.

disclosed the APR in any “layaway” sales script despite the fact that the Defendants consistently refer to “financing” in the March 2006 to Late 2006 “Layaway” Sales Script.

120. Later on in the Defendants March 2006 to Late 2006 “Layaway” Sales Script, the Defendants stated the following, in relevant part:

You have also given us the ok to then draft 52 consecutive weekly layaway payments of \$39.99 beginning on [date] drafting on [weekday] until you have paid in full - at which point your new computer system including software and accessories will be \$2,203⁷⁰
...

121. The \$2,203 figure, which presumably includes a \$25.00 add-on for additional software, does not account for the 14.9% APR interest rate included in the Defendants’ Revolving Charge Agreement.

Failing to Give Consumers A General Description of Material Terms in Advertisements and Failing to Clearly and Conspicuously Disclose Material Terms Throughout

122. The Defendants have failed in each first contact with consumers to provide a general description of the types and categories of restrictions, qualifications, or other conditions, that must be satisfied before the consumer is entitled to receive or use the prize or travel service, or product or service offered.⁷¹

123. The Defendants have also failed to clearly and conspicuously disclose the

⁷⁰ Ex. 54, March 2006 to Late 2006 Layaway Sale Script, at 28.

⁷¹ Ex. 3, Aff. of Alice Forrester, at para. 9 (“I do not recall hearing on the first phone conversation or seeing on the BlueHippo advertisement that I would have to make all of my payments consecutively in full to receive the free merchandise and that if I did not, the company reserved the right to not deliver the free merchandise or extend the number of payments to cover the “free” merchandise.”); Ex. 4, Aff. of Connie Roberts, at para. 9; Ex. 5, Aff. of Patty Serda, at para. 9; Ex. 7, Aff. of Billy Bowling, at para. 9; Ex. 8, Aff. of Jessica King, at para. 9; Ex. 9, Aff. of Angela Atkins, at para. 10; Ex. 11, Aff. of Kathy Collins, at para. 9; Ex. 12, Aff. of Cynthia Brunat, at para. 11; Ex. 13, Aff. of Angela Ard, at para. 9; Ex. 15, Shinetta Berry, at para. 9; Ex. 16, Aff. of Rebecca Good, at para. 11; Ex. 18, Aff. of Christine Pruitt, at para. 9; Ex. 19, Aff. of Linda Taylor, at para. 10 (“I thought that I would be receiving my computer and free merchandise right away.”); Ex. 20, Aff. of Brenda Lowrance, at para. 8; Ex. 21, Aff. of Cari Wilson, at para. 9; Ex. 22, Aff. of James Robertson, at para. 9; Ex. 23, Aff. of Carl Lewis, at para. 9; Ex. 25, Aff. of Barbara Smith, at para. 9; Ex. 28, Aff. of Jo Ann Qualls, at para. 9; Ex. 29, Aff. of Robert Hughes, at para. 9; Ex. 31, Aff. of Thelma Harrison, at para. 9.

material rules, terms, or restrictions governing an offer that is an inducement to purchase a good, service, or other product or to otherwise incur a monetary obligation.

124. Where the Defendants have disclosed limited terms or conditions associated with their “free” items or corresponding products, the disclosure is stated broadly and ambiguously with qualifiers such as “with your paid purchase” or similar phrases.

125. Even the limited “with your paid purchase” disclosure has been stated and applied inconsistently throughout the Defendants’ advertisements.

126. The following advertisements from the Defendants that represent items as “free” list the *only* conditions associated with the receipt of “free” items as “with your paid order,” “with your paid purchase,” or “order in seven days:”

BH-CL6, BH-CL7, BH-CL8, BH-PC1, BH-PC2, BH-PC3, BH-PR37, BH-PR38, BH-PR39, BH- BH-PR41, BH-PR42, BH-PR43, BH-PR45, BH-PR46, BH-PR47, BH-PR49, BH-PR50, BH-PR51, BH-PR52, BH-PR53, BH-PR54, BH-PR55, BH-PR56, BH-PR57, BH-PR59, BH-PR60, BH-PR61, BH-PR62, BH-PR63, BH-PR64, BH-PR65, BH-PR66, BH-PR67, BH-PR68, BH-PR69, BH-PR70, BH-PR71, BH-PR72, BH-PR73, BH-PR74, BH-PR75, BH-PR76, BH-PR77, BH-PR78, BH-PR81, BH-PR82, BH-PR83, BH-PR84, BH-PR85, BH-PR86, BH-PR87, BH-PR88, BH-PR89, BH-PR90, BH-PR92, BH-PR96, BH-PR97, BH-PR98, BH-PR99, BH-PR100, BH-PR101, BH-PR102, BH-PR103, BH-PR104, BH-PR105, BH-PR106, BH-PR107, BH-PR108, BH-PR109, BH-PR110, BH-PR111, BH-PR112, BH-PR113, BH-RA63, BH-RA65, BH-RA67, BH-RA72, BH-RA83, BH-RA85, BH-RA86, BH-RA87, BH-RA88, BH-RA89, BH-RA89, BH-RA93, BH-RA95, BH-RA96, BH-RA97, and BH-CL14.

127. BH-PR22, shown below, and the following advertisements used by the Defendants that list an item as “free” do not even provide the “with your paid order” qualifier, and do not contain any other qualifier on the items advertised as “free” besides at most “if ordered within the next seven days” or “for a limited time:”

BH-CL3, BH-CL4, BH-CL5, BH-CL10, BH-CL11, BH-CL12, BH-CL13, BH-IN1, BH-IN2, BH-PR3, BH-PR4, BH-PR5, BH-PR6, BH-PR7, BH-PR8, BH-PR9, BH-PR10, BH-PR11, BH-PR12, BH-PR13, BH-PR14, BH-PR15, BH-PR16, BH-PR17, BH-PR18, BH-PR19, BH-PR20, BH-PR21, BH-PR23, BH-PR24, BH-PR25, BH-PR26, BH-PR27, BH-PR28, BH-PR29, BH-PR30, BH-PR31, BH-PR32, BH-PR33, BH-PR34, BH-PR35, BH-PR36, BH-RA13, BH-RA14, BH-RA15, BH-RA16, BH-RA17, BH-RA19, BH-RA20, BH-RA21, BH-RA22, BH-RA23, BH-RA24, BH-RA25, BH-RA26, BH-RA27, BH-RA28, BH-RA29, BH-RA30, BH-RA32, BH-RA33, BH-RA34, BH-RA35, BH-RA36, BH-RA37, BH-RA38, BH-RA39, BH-RA40, BH-RA41, BH-RA42, BH-RA43, BH-RA44, BH-RA45, BH-RA46, BH-RA47, BH-RA48, BH-RA49, BH-RA50, BH-RA51, BH-RA52, BH-RA53, BH-RA54, BH-RA55, BH-RA56, BH-RA57, BH-RA58, BH-RA59, BH-RA60, BH-RA61, BH-RA62, BH-RA64, BH-RA66, BH-RA68, BH-RA69, BH-RA70, BH-RA73, BH-RA74, BH-RA75, BH-RA76, BH-RA77, BH-RA78, BH-RA79, BH-RA80, BH-RA82, BH-RA90, BH-RA91, and BH-TV2. BH-RA92 reads “FREE with your order” rather than “with your paid order.” The disclosure box in BH-TV4, BH-TV6, BH-TV7, BH-TV8, and BH-TV10 cannot be read.

**Get a new computer
(no credit check).**



Call 1-800-369-7061 today.

BlueHippo® guarantees your approval for a new, brand-name computer regardless of your credit history. You can pay by the week, all you need is a checking account!



GET A FREE TV* CALL NOW

*Order within the next 7 days and we'll also send you an ultra-thin 20-inch LCD TV plus a 3-in-1 printer/scanner/copier absolutely FREE.





You're Approved. Guaranteed!

Material Terms – Prior to March 2006

128. Prior to March 2006, BlueHippo explicitly represented that signing the “Revolving Account Agreement” was required in order to have the products shipped, but failed to clearly and conspicuously disclose the key terms of the “Revolving Account Agreement” in any pre-March 2006 advertisement or sales script.

129. BlueHippo stated in its pre-March 2006 cover letter that was sent with a “Sales Order Form,” the following, in relevant part:

To make sure your computer will be shipped on time, *please sign and fax back all documents listed on the Fax Cover Page checklist. We cannot ship your computer until we have this information.*⁷² (Emphasis added).

130. BlueHippo’s pre-March 2006 fax cover page stated the following:

I am faxing back the following documents:

- 9 This cover page
- 9 My driver’s license or state identification card
- 9 A voided check
- 9 My latest pay stub that shows my current employer and wages
- 9 Signed copy of my Shipping Verification Form
- 9 *Signed copy of my Revolving Account Agreement*⁷³ (Emphasis added).

131. BlueHippo stated in the same pre-March 2006 fax cover page, the following, in relevant part:

Why we need this information?

[W]hen you “purchase a computer” from BlueHippo, *you are actually agreeing to finance a computer - this is a loan.* As with any loan, certain pieces of information are required.⁷⁴ (Emphasis added).

132. Elsewhere, prior to March 2006, BlueHippo represented on its web site the

⁷² Ex. 41, BlueHippo’s Pre-March 2006 Cover Letter, at para. 2 (Emphasis in original).

⁷³ Ex. 40, BlueHippo’s Pre-March 2006 Fax Cover Letter (Emphasis added).

⁷⁴ Ex. 40, BlueHippo’s Pre-March 2006 Fax Cover Letter (Bold emphasis in original, italicized emphasis added).

following, in relevant part:

Q: How does this program work?

A: Its [sic] simple. Instead of checking your credit, and measuring you based on your credit history, all we ask is that you pay just \$99 down and make 13 weeks worth of payments. Once those payments have been made, and we have received the *required* signed paperwork (which is sent out to you right after your order has been processed), your computer will be shipped out to your home via FedEx or UPS. Then you continue making payments until the computer is paid off.⁷⁵ (Emphasis added).

133. BlueHippo's Pre-March 2006 "Revolving Account Agreement," which was included as part of the "paperwork" referenced above, contained the following term, in relevant part, "CONFIRMATION. You understand that you must also sign and return this [Revolving Account] Agreement and any other requested information prior to our auditors approving you for shipment."⁷⁶

134. Under the pre-March 2006 "Revolving Account Agreement" the following terms were not contained or generally described in any pre-March 2006 advertisement or sales script:

CHANGE IN TERMS. We may, at any time and subject to applicable law: . . . (e) change any other terms and conditions of this Agreement relating to your Account (including increasing any Finance Charge or interest rate). Unless prohibited by applicable law, we may apply such changes or new terms to any outstanding balance of your Account on the effective date of the change and to any future balances incurred after that date. When required by applicable law, we will mail a notice of change(s) to you. . .

DEFAULT. [A]fter default or your death, and subject to the limitations or applicable law, we have the right to do any or all of the following: (i) reduce your Credit Limit or terminate your Account . . . (ii) require immediate payment of your entire Account balance including Same as Cash balances, all accrued but unpaid

⁷⁵ http://web.archive.org/web/20060406152111/www.bluehippo.com/ourProgram_FAQ.asp (last visited June 12, 2008) (Emphasis added).

⁷⁶ Ex. 43, Pre-March 2006 Revolving Account Agreement (Emphasis added).

Finance Charges, and all Fees and other charges listed in this Agreement, (iii) require the immediate payment of liquidated damages, which shall be computed by subtracting any payments previously posted from the merchandise Subtotal amount due on your Shipping Verification Form and multiplying the result by 66%, and (iv) bring an action to collect all amounts owed. If you are in default you agree that the rate of interest shall be increased to 24% APR or the maximum allowed by law and that rate shall be applicable to any post-judgment interest as well. If you are in default you give us permission to draft your checking or savings account in any amount at any time until your account balance is paid in full. If we refer your Account for collection, we may, to the extent permitted by applicable law, charge you or collect from you our collection costs, of 25% of the unpaid amount, including court cost, disbursements and reasonable attorneys' fees of 33% of the unpaid amount."

PAYMENTS. [Y]ou understand and agree that your merchandise will be shipped 3-12 weeks after our auditors approve your order for shipping, provided you are not in Default.

CONFIRMATION. You understand that you must also sign and return this Agreement and any other requested information prior to our auditors approving you for shipment. You agree that we may run payment confirmation software on your computer.

FINANCE CHARGES. The Finance Charge for each billing cycle is computed by multiplying the "Average Daily Balance" by the daily periodic rate of 0.0408219% (corresponding 14.9% Annual Percentage Rate) times the number of days in the billing cycle.

FEES. We may impose a Late Payment Fee of \$10 if we do not receive your required payment within 10 days after the Payment Due Date shown on your current Statement.

ADDITIONAL RIGHTS OF OURS. [W]e may investigate your credit and report to credit reporting agencies on the payment history of your Account.

AGREEMENT TO ARBITRATION. Any dispute between us arising out of this Agreement or the breach of this Agreement, including any claim against any of our affiliates, successors or assigns, or our employees, agents or officers, may at the choice of either party, be determined by individual (and not class) binding

arbitration by the National Arbitration Forum, under the Code of Procedure then in effect.

135. Neither the Defendants' pre-March 2006 sales script nor their pre-March 2006 advertisements disclose the time frame that consumers would receive their "free" items.

136. None of the Defendants' pre-March 2006 sales scripts, advertisements, or other materials distributed to consumers with billing addresses in Tennessee clearly and conspicuously disclose the refund, exchange, or return policies in regard to the Defendants' inducement offer, product offer, or monetary obligation offer.

Material Terms – March 2006 to Late 2006

137. The Defendants both failed to give a general description of types of conditions, terms, and restrictions in its March 2006 to late 2006 advertisements and also failed to otherwise clearly and conspicuously disclose material terms under both its "layaway" plan and financing plan.

138. Between March 2006 and late 2006, the Defendants default consumer payment option was the "layaway" program.

139. From March 2006 to late 2006, the Defendants did not disclose material terms of their "Layaway Agreement" or provide a general description of the types of conditions, terms, and restrictions in any advertisement, sales script, or sales call.

140. From March 2006 to late 2006, the Defendants sent consumers a cover letter to their "Sales Order Form" and "Layaway Agreement" which stated, the following, in relevant part:

Dear [Consumer Name]

Congratulations on your layaway purchase of a **BRAND NEW** computer. Your account has been activated and your bank account will be debited according to the enclosed Sales Order.

About This Paperwork

To make sure your computer will be shipped on time, please sign the enclosed Sales Order and the Layaway Agreement. It is **VERY IMPORTANT THAT YOU SIGN AND RETURN BOTH FORMS AND INCLUDE A VOIDED CHECK** in the enclosed envelope.

*We want to get you your new computer as soon as possible - so it is **IMPORTANT** that you mail your paperwork in right away!*⁷⁷
(Italicized emphasis added).

141. The Defendants also represented in the same cover letter to the “Layaway Agreement” and “Sales Order Form” that the “Layaway Agreement” and “Sales Order Form” were required in order for the consumer’s product to be shipped.

142. BlueHippo Capital stated in this cover letter to the “Layaway Agreement” and “Sales Order Form” in a box at the center of the page in larger bold font, the following, in relevant part: “*We can’t ship your computer until we have this information, so send it back **right away!***”⁷⁸
(Italicized emphasis added).

143. The “Layaway Agreement Terms and Conditions” document used from March 2006 until approximately June 2006 contained the following terms that were not disclosed or described in any advertisement, sales call, or sales script between March 2006 until the end of June 2006:

2. MINIMUM PAYMENT DUE: [W]hen you pay as agreed on this layaway purchase, the Auditors may, at their discretion, offer to finance your remaining layaway balance and ship your merchandise before your layaway merchandise is paid in full. . . . [I]f we deem ourselves in any way insecure, you may be required to

⁷⁷ Ex. 45, March 2006 to Late 2006 Cover Letter, at paras. 1-3. (Underlined and Bold emphasis in original; italicized emphasis added).

⁷⁸ Ex. 45, March 2006 to Late 2006 Cover Letter. (Bold emphasis in original, italicized emphasis added); See also, Ex. 8, Aff. of Jessica King, Attach. A (stating, “After I’ve paid my initial payment a minimum of 13 consecutive weeks worth of payments, BlueHippo will offer to finance my balance. Once I’ve made these payments and I’ve signed and sent back the Retail Installment Contract, BlueHippo can process my computer for shipment – of course I can always continue on the layaway plan if I prefer.”)

pay your entire layaway purchase amount before your layaway purchase is shipped. . . . After you have been offered, and accepted, the terms of the Revolving Charge Agreement, please allow six (6) to eight (8) weeks for the completion of the purchasing, production, testing, and shipping phase of your layaway purchase.

3. DEFAULT. Subject to the limitations of applicable law, you will be in default under this Agreement upon (a) your failure to make at least the Total Minimum Payment when due, (b) bankruptcy or insolvency proceedings, . . . (d) your supplying us with misleading, false, incomplete, or incorrect information or (e) your payment being returned unpaid by your bank for any reason. After default, and subject to the limitations of applicable law, we have the right to (i) terminate your Account, in which case the terms of this Agreement will apply until full payment of the amount owing on your Account is received, (ii) require you to immediately pay your entire Account balance, including all Fees and other charges listed in this Agreement, as well as reasonable attorneys fees and court costs, and (iii) bring an action to collect all amounts owed, if you are in default you give us permission to draft your checking or savings account in any amount at any time until your account balance is paid in full. [T]herefore, upon occurrence of your default you will be liable to us for the exact amount of your total payments to us prior to default as liquidated damages, and not as a penalty. Additionally, if your Account is in default, any special promotions, discounts or rebates initially offered to you can be revoked and the shipping of your computer will be delayed no less than six (6) weeks for each defaulted payment.

8. ACCURACY OF INFORMATION. [Y]ou agree that we may obtain employment and income records, a credit bureau report on you, verify your credit references and we may check any of the information provided on this application from whatever source we choose to verify it. Additionally, upon request, you agree to promptly give us accurate updated financial information about yourself.

11. SPECIAL PROMOTIONS: [I]f your Account goes into Default, at any time, you may be required to pay for those promotional free items and they will be added to your principal. . . .

14. CHANGE OF TERMS. We may change or terminate any terms, conditions, services or features of your Account or this Agreement at any time. We may also add new terms, conditions, services or features to your Account or this Agreement. To the

extent required by law, we will notify you as your address as shown on our records.

15. FEES. We may impose on your Account the following fees, which will be added to your Account when assessed: A) Late Payment Fee: if you fail to pay us the Total Minimum Payment Due in full by the Payment Due Date on your billing statement, you agree to pay a Late Payment Fee of \$15. B) Returned Check Fee: You agree to pay \$25 each time any payment check on your

Account is returned unpaid by your bank or other financial institution for any reason.

19. AGREEMENT TO ARBITRATE DISPUTES. By signing below and to induce us to process and consider your layaway purchase, you and we agree that any and all claims, disputes, or controversies that we or our servicers or agents have against you or that you have against us, our servicers, agents, directors, officers, and employees, that arise out of your layaway purchase, the Agreement that you must sign to obtain the layaway purchase misrepresentation, whether under the common law or pursuant to federal or state statute or regulation, or otherwise, shall be resolved by binding individual (and not class) arbitration by and under the Code of Procedure of the National Arbitration Forum ("NAF") in effect at the time the claim is filed . . .

144. The Defendants' "Layaway Agreement Terms and Conditions" Form used from approximately June 2006 until late 2006 likewise contained material terms that were not clearly and conspicuously disclosed on any advertisement, sales script, or sales call during the use of this "Layaway Agreement Terms and Conditions," including the following:

2. MINIMUM PAYMENT DUE: You've agreed to a non-refundable Activation Fee of \$99.00 to be drafted on [date]. [W]hen you pay as agreed on this layaway purchase, the Auditors may, at their discretion, offer to finance your remaining layaway balance and ship your merchandise before your layaway merchandise is paid in full. If the Auditors offer, and you choose to accept the terms of the Revolving Charge Agreement, and to finance the remaining balance on your Layaway Account, you will be required to accept the terms of the Revolving Charge Agreement before you merchandise is released for fulfillment . . . You understand that establishing a consecutive layaway payment history is a strict

requirement to qualify for the Revolving Charge Agreement offer. [I]f you have a change in address, if you request or change your payment draft dates, if you request or change your payment draft amount, if you request or change your payment draft frequency, if you have a change in employment, if you have a change in income, if you change the bank account we are drafting, . . . you may be required to pay your entire layaway purchase amount before your layaway purchase is shipped. All layaway payments are non-refundable unless a written request is received prior to the date any of this merchandise is ordered from our supplier. . . After you have been offered and accepted, the terms of the Revolving Charge Agreement, please allow six (6) to eight (8) weeks for the completion of the purchasing, production, testing, and shipping phase of your layaway purchase.

3. DEFAULT: Subject to the limitations of applicable law, you will be in default under this Agreement upon . . . (b) your violation of any other provision of this Agreement, [u]pon occurrence of your default you will be liable to us for the exact amount of your total payments to us prior to default as liquidated damages, and not as a penalty. Additionally, if your Account is in default any special promotions, discounts, or rebates initially offered to you can be revoked and any offer to finance your layaway balance will be delayed by six (6) weeks for each defaulted payment.

8. ACCURACY OF INFORMATION: [Y]ou agree that we may obtain employment and income records, a credit bureau report on you, verify your credit references and we may check any of the information provided on this application from whatever source we choose to verify it. Additionally, upon request, you agree to promptly give us accurate updated financial information about yourself.

11. SPECIAL PROMOTIONS: Any special promotions, rebates, or free items (cash or other) included in your purchase are provided contingent upon your Account not going into default.

14. CHANGE OF TERMS: We may change or terminate any terms, conditions, services, or features of your Account or this Agreement at any time. We may also add new terms, conditions, services or features to your Account or this agreement [sic] To the extent required by law, we will notify you in advance of any change in terms or any new terms by mailing a notice to you at your address as shown on our records.

19. CHOICE OF LAW & VENUE: This Agreement shall be deemed to have been made, accepted and executed in the State of Nevada. Nevada law, without regard to choice of law, governs the interpretation, validity and enforcement of this Agreement. The venue for any action, dispute or proceeding with respect to this Agreement shall be Las Vegas, Nevada.

20. AGREEMENT TO ARBITRATE DISPUTES: By signing below and to induce us to process and consider your layaway purchase, you and we agree that any and all claims, disputes or controversies that we or our services or agents have against you or that you have against us, our services, agents, directors, officers and employees, that arise out of your layaway purchase, the Agreement that you must sign to obtain the layaway purchase, this agreement to arbitrate disputes, collection of the layaway purchase, or alleging fraud or misrepresentation, whether under the common law or pursuant to federal or state statute or regulation, or otherwise, shall be resolved by binding individual (and not class) arbitration by and under the Code of Procedure of the National Arbitration Forum ("NAF") in effect at the time the claim is filed.

21. AGREEMENT NOT TO BRING OR PARTICIPATE IN CLASS ACTIONS: To the extent permitted by law, you agree that you will not bring, join or participate in any class action as to any claim, dispute or controversy you may have against us or our agents, services, directors, officers and employees. You agree to the entry of injunctive relief to stop such a lawsuit or to remove you as a participant in the suit. You agree to pay the attorney's fees and court costs we incur in seeking such relief.

145. From March 2006 to late 2006, the Defendants broadly described their offer as financing, but did not clearly and conspicuously disclose or generally describe the material terms of the financing agreement in any advertisement, sales call, or sales script or that the consumer had to sign a separate financing agreement.

146. The Defendants stated the following in their "layaway" sales script during March 2006 until late 2006:

If you would like to finance a computer through BlueHippo, then all you need to do is go down to your local bank and set up a

checking account.⁷⁹

This is pretty easy, *all you have to do* is make a small activation payment and then pay just 6 short weeks of layaway payments. *Then we finance your balance*, order your computer, and have it shipped directly to your home. Once you get your computer, you just continue making your payments until you are fully paid off.⁸⁰

After you've paid your activation payment and a minimum of 6 consecutive weeks of payments *our auditors will offer to finance your balance*. When you sign and send the offer back, the auditors will approve your computer for shipment - of course, you can always continue on the layaway plan if you prefer.⁸¹

147. The "Revolving Charge Agreement" used from March 2006 until late 2006, includes several material terms that were not clearly and conspicuously disclosed or generally described in any March 2006 to late 2006 advertisement, sales script, or sales call, including:

6. FINANCE CHARGES: The Finance Charge for each billing cycle is computed by multiplying the "Average Daily Balance" by the daily periodic rate of 0.0408219 % (corresponding 14.9% Annual Percentage Rate) times the number of days in the billing cycle.

7. FEES: We may impose on your Account the following fees, which will be added to your Account when accessed: A) Late Payment Fee: If you fail to pay us the Total Minimum Payment Due in full by the Payment Due Date on your billing statement, you agree to pay a Late Payment Fee of \$15

8. CONFIRMATION: You understand that you must also sign and return this Agreement and any other requested information prior to our auditors approving you for financing. You agree that we may run payment confirmation software on your computer.

9. DEFAULT: Subject to the limitations of applicable law, you will be in default under this Agreement, upon . . . (b) your violation of any other provision of this Agreement . . . If you are in

79 Ex. 54, March 2006 to Late 2006 Layaway Sales Script, at 3 (Emphasis added).

80 Ex. 54, March 2006 to Late 2006 Layaway Sales Script, at 4.

81 Ex. 54, March 2006 to Late 2006 Layaway Sales Script, at 29.

default you agree that the rate of interest shall be increased to 24% APR or the maximum allowed by law and that rate shall be increased to 24% APR or the maximum allowed by law and that rate shall be applicable to any post-judgment interest as well. [I]f you are in default you give us permission to draft your checking or savings account in any amount at any time until your account balance is paid in full.

10. SPECIAL PROMOTIONS: [I]f your Account goes into Default, at any time, you may be required to pay for those promotional free items and they will be added to your principal or you may become ineligible to receive these items, discounts or rebates.

12. ACCURACY OF INFORMATION: [Y]ou agree that we may obtain employment and income records, a credit bureau report on you, verify your credit references and we may check any of the information provided on this application from whatever source we choose to verify it. You agree that the Department of Motor Vehicles may release your residence address to us should it become necessary to locate you. Additionally, upon request, you agree to promptly give us accurate updated financial information about yourself.

19. CHANGE OF TERMS: Other than paragraphs 26 and 27, we may change or terminate any terms, conditions, services or features of your Account or this Agreement at any time. We may also add new terms, conditions, services or features to your Account or this Agreement.

24. CHOICE OF LAW & VENUE: [T]he venue for any action, dispute or proceeding with respect to this Agreement shall be Baltimore, Maryland.

25. CREDIT REPORTS: You give us permission to request information from you and to make whatever inquiries we consider necessary and appropriate (including requesting a consumer report from reporting agencies) for the purposes of any updates, renewals or extension of credit or reviewing or collecting your Account. . . .

26. AGREEMENT TO ARBITRATE DISPUTES: By signing below and to induce us to process and consider your financing, you and we agree that any and all claims, disputes or controversies that we have against you or that you have against us, or our servicers, agents, directors, officers and employees, arising

out of or relating to your layaway purchase or this financing, this Agreement, this agreement to arbitrate disputes, collection of your payments, or alleging fraud or misrepresentation, whether under the common law or pursuant to federal or state statute or regulation, or otherwise, shall be resolved by binding individual (and not class) arbitration by and under the Code of Procedure of the National Arbitration Forum (“NAF”) in effect at the time the claim is filed. This agreement to arbitrate disputes shall apply no matter by whom or against whom the claim is filed . . .

27. AGREEMENT NOT TO BRING OR PARTICIPATE IN CLASS ACTIONS: To the extent permitted by law, you agree that you will not bring, join, or participate in any class action as to any claim, dispute or controversy you may have against us or our agents, servicers, directors, officers and employees. You agree to the entry of injunctive relief to stop such a lawsuit or to remove you as a participant in the suit. You agree to pay the attorney’s fees and court costs we incur in seeking such relief. . .

148. Neither the Defendants’ March 2006 to late 2006 sales script nor their March 2006 to late 2006 advertisements disclose or generally describe that receipt of “free” items was contingent on completion of all scheduled payments on time and in full.

149. None of the Defendants’ March 2006 to late 2006 sales scripts, advertisements, or other materials distributed to consumers with billing addresses in Tennessee clearly and conspicuously disclose the refund, exchange, or return policies in regard to the Defendants’ inducement offer, product offer, or monetary obligation offer.

Material Terms – Current Business Model

150. In the current business model, the Defendants place pressure on the consumer to sign the financing agreement in a manner that suggests that the financing agreement is required.

151. The Defendants send all of their “paperwork” including their financing agreement and the cover letter to the financing agreement to the consumer as part of the Defendants’ “Welcome Package.”

152. The Defendants state on their cover letter to the “Retail Installment Contract,” the following, in relevant part:

Congratulations! You’ve been **PRE-APPROVED** for our Installment Account Plan, subject to all of the terms and conditions of the enclosed RETAIL INSTALLMENT CONTRACT. Be sure to read all of the pages and **sign and return the RETAIL INSTALLMENT CONTRACT and the ADDRESS VERIFICATION FORM** as soon as possible.⁸²

Please read this letter. These are **NOT** the forms you signed before. Help us ship you your merchandise as soon as possible.⁸³

What are these documents?

The Retail Installment Contract and Address Verification Form have to be completely filled out, signed and returned to us in the enclosed envelope if you would like us to finance, without checking your credit, your Premier Desktop Computer purchase. Of course you could always continue on layaway if you prefer, but you wouldn’t get your merchandise until it’s completely paid for.

When will my merchandise ship?

Providing you continue to make all of your pre-shipment payments on time, we will process your order and have it shipped to you within 3-4 weeks of receipt of these forms. Remember, any missed payments will **absolutely** delay your financing approval and your shipment date.⁸⁴

These [forms] are different - and they have to be signed and sent back if you would like us to finance your Premier Desktop Computer and ship it to you before you are paid in full.⁸⁵

153. Under the current business model, the Defendants describe their offer in terms of “financing,” but fail to clearly and conspicuously disclose the material terms of the financing agreement.

⁸² Ex. 59, Current Cover Letter to Retail Installment Contract. (Emphasis in original).

⁸³ Ex. 59, Current Cover Letter to Retail Installment Contract. (Emphasis in original).

⁸⁴ Ex. 59, Current Cover Letter to Retail Installment Contract. (Emphasis in original).

⁸⁵ Ex. 59, Current Cover Letter to Retail Installment Contract. (Emphasis in original).

154. The Current Sales Script states, the following, in relevant part:

Now, [First Name] to make sure that *our financing* is available in your area I'm going to need to get your address.⁸⁶

Now, because we don't check your credit, all we ask is that you build a short credit history with us by making a small down payment - which doesn't have to be paid today - and then pay just 9 short weeks worth of layaway payments. *Then we finance, order and ship your computer directly to your home. Once we get your computer, you just continue making your payments until you are fully paid off.*⁸⁷ (Emphasis added).

155. Elsewhere, in the sales script for the current business model, the Defendants imply that the financing agreement is required to be signed, when this is not the case, by referring generically to paperwork, welcome packets, and welcome kits that “you need to sign and send back to us as soon as possible.”

156. The Defendants advise consumers that they need to sign and send back the “important forms” contained in the Defendants’ welcome packet.⁸⁸

157. In the current sales script, the Defendants state the following:

[First name] within the next week you'll receive a welcome packet in the mail from us. *Included in your welcome packet will be everything I've told you over the phone in writing and a couple of important forms that you need to sign and send back to us as soon as possible - ok?*⁸⁹ (Emphasis added).

158. The “Retail Installment Contract” under the current business model contains material terms that were not disclosed in any advertisement, sales script or sales call, including the following:

⁸⁶ Ex. 55, Current Sales Script, at 2.

⁸⁷ Ex. 55, Current Sales Script, at 4 (Emphasis added).

⁸⁸ Ex. 25, Aff. of Barbara Smith, at para. 13 (“Despite repeated requests to have my computer sent to me, the salespersons kept telling me that I still had more paperwork to fill out. I asked that this paperwork be sent to me several times and I have never got any more paperwork from them.”)

⁸⁹ Ex. 55, Current Sales Script, at 12 (Emphasis added).

FINANCE CHARGES: This is a simple interest Contract. The finance charges you pay will depend on how you make your payments. Your actual finance charges may be more than the disclosed Finance Charges if you make your payments late or in less than the scheduled amount. . . . Finance Charges are earned on a daily basis by applying the Contract Rate to the unpaid balance of the Amount Finance for the time such balance is owed.

WARRANTIES SELLER DISCLAIMS: Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this Contract, the Seller makes no warranties, express or implied, on the Property, and there will be no implied warranties of merchantability or fitness for a particular purpose. . . .

LATE CHARGES AND RETURNED CHECKS: If we receive your payment late, you agree to pay us the charge for late payments shown in the TILA Box on the first page of this Contract, as well as any cost we pay to collect any late payment, as allowed by law. . . . Unless prohibited by applicable law, you also agree to pay the following fee for any check or other instrument you give us that is unpaid for any reason: \$20.00. . .

DEFAULT: . . . You will be in default . . . if you do not keep any other agreement in this Contract. If you are in default, we may require you to pay at once the unpaid balance of the Amount Financed, the earned and unpaid part of the Finance Charge and all other amounts due under this Contract. Further, if you are in default you agree that the rate of interest shall be increased to 24% or the maximum rate allowed by law, and that rate shall be applicable to any post-judgment interest as well. Also, if you are in default, you give us permission to draft your checking or savings account in any amount at any time until your account balance is paid in full.⁹⁰

SPECIAL PROMOTIONS: . . . If this Contract goes into default at any time, you may be required to pay for those promotional free items and they will be added to the Amount Financed or you may become ineligible to receive these items, discounts or rebates.

⁹⁰ See also, Ex. 63, Aff. of Linda McIntosh, at para. 10 (“On the phone call, I do not recall BlueHippo telling me anything about what would happen if I would go into default. I do not recall hearing the salesperson tell me that BlueHippo had the ability to accelerate all outstanding amounts owed and charge the highest interest rate allowed by law or 24% whichever is higher.”)

ACCURACY OF INFORMATION/CREDIT REPORTS: All of the information you furnished to us is, to the best of your knowledge, complete and accurate. You agree that we may obtain employment and income records, a credit bureau report on you, verify your credit references and we may check any of the information provided on this application from whatever source we choose to verify it. You agree that the Department of Motor Vehicles may release your information about yourself.

GOVERNING LAW & VENUE: The law of the state of Virginia applies to this Contract: and, venue for any action, dispute or proceeding with respect to this Contract shall be in Fairfax County, Virginia. If that law does not allow all the agreements in this Contract, the ones that are not allowed will be void; and, the rest of this Contract will still be good.

MISCELLANEOUS: . . . You acknowledge that we may have required you to provide to our auditing department the following documentation for identity, residence and employment verification purposes only: photocopy of valid state issued drivers license or identification card: photocopy of federally issued social security card; photocopy of current utility bill in your name and showing your current address; photocopy of a current pay stub in your name; copy of a current bank statement in your name showing a positive balance. . . .

ARBITRATION: By signing below and to induce us to process and consider your financing, you and we agree that any and all claims, disputes or controversies that we or our servicers, agents, directors, officers, or employees, have against you, or that you have against us, our servicers, agents, directors, officers or employees, arising out of or relating to your layaway purchaser or this financing, this Agreement, this agreement to arbitrate disputes, collection of your payments, or alleging fraud or misrepresentation, whether under the common law or pursuant to a federal or state statute or regulation, or otherwise, shall be resolved binding individual (and not class) arbitration by and under the Code of Procedure of the National Arbitration Forum ("NAF") in effect at the time the claim is filed. . .

159. The Defendants also fail to clearly and conspicuously disclose a material term in their current "Layaway Agreement."

160. The following term is contained in the current "Layaway Agreement" and is not

clearly and conspicuously disclosed in any advertisement, sales script or sales call:

I have purchased a brand new Dell Desktop which includes the FREE Digital Camera and the FREE Color Printer *which I will receive after I've made all 26 payments as agreed.*⁹¹ (Emphasis added).

161. The Defendants' current sales script does not clearly and conspicuously disclose that "free" items and rebate will be forfeited or billed if the consumer is late on one payment under either the "layaway" plan or the "financing" plan.

162. Beginning in late 2006, none of the Defendants' current sales scripts, advertisements, or other materials distributed to consumers with billing addresses in Tennessee clearly and conspicuously disclose the refund, exchange, or return policies in regard to the Defendants' inducement offer, product offer, or monetary obligation offer.

Failing to Supply "Free" Merchandise Even When Consumer Fulfills All Obligations

163. For some, even when the consumer has made consecutive payments on-time and in full, the consumer has still failed to receive items advertised as "free."⁹²

164. In other cases, the consumer has only received the "free" merchandise after repeated calls to the company and to consumer advocate groups such as the Better Business Bureau.

165. Consumer L. Taylor, for example, was originally told by the Defendants'

⁹¹ Ex. 51, Current Layaway Agreement (Emphasis added).

⁹² Ex. 1, Aff. of Georgia Harper, at para. 13; Ex. 7, Aff. of Billy Bowling, at para. 14 ("Even though I made every single payment on time, I still did not receive my printer or flat-panel television. It was my understanding that I would receive these free items when my computer arrived after I made my total of 6 payments."); Ex. 15, Aff. of Shinetta Berry, at para 11 ("I have paid \$2448.27 to BlueHippo. I have received the computer and a camera . . . Despite my repeated calls to BlueHippo, I have never received the printer that was promised to be in the initial call. BlueHippo has repeatedly told me the printer is "on backlog.") See also, Ex. 8, Aff. of Jessica King, at para. 12 ("I have paid over \$3200.00 to BlueHippo and have not received a computer nor a refund . . . Per the original agreement, I was supposed to have my computer in April of 2008 and that should have been my last payment. However, BlueHippo has not sent my computer and continues to take money out of my account even though I have paid more than the total price of the computer on the contract which is only \$1878.48.").

representative that she was ineligible to receive the “free” gifts because she had purportedly missed a payment. After “arguing with them and proving to them that [she] had overdraft protection, [the Defendants] finally admitted it was their mistake.” It took two to three months after Ms. Taylor had completely paid for her computer to get the printer. The flat panel television came six to seven months after she made her last payment and only after she had contacted the Better Business Bureau.⁹³

**FALSELY STATING THAT CONSUMERS WERE REQUIRED TO SIGN
FINANCING AGREEMENT FROM MARCH 2006 UNTIL LATE 2006**

166. From March 2006 to late 2006, the Defendants made false statements to every consumer who was sent a financing agreement that indicated that consumers were required to sign the Defendants’ financing agreement.

167. The Defendants stated on their credit offer letter from March 2006 until late 2006, the following, in relevant part:

*We can’t ship your computer until we have this information, so send it back **right away!***⁹⁴

It is very important that you sign and return the **REVOLVING CHARGE AGREEMENT** and the **VERIFICATION FORM** right away. *We can’t complete the purchasing, production, testing and shipping phase of your layaway purchase until we receive these forms.*⁹⁵ (Emphasis added).

168. These statements by the Defendants own documents are completely false and misrepresent the express terms of the Defendants’ own “Layaway Plan Agreement.”

169. The “Layaway Plan Agreement” from March 2006 until late 2006 explicitly

⁹³ Ex. 19, Aff. of Linda Taylor, at para. 13.

⁹⁴ Ex. 48, March 2006 to Late 2006 Layaway Credit Offer Letter (Italicized emphasis added; Bold emphasis in original).

⁹⁵ Ex. 48, March 2006 to Late 2006 Layaway Credit Offer Letter (Italicized emphasis added; Bold emphasis in original).

stated, albeit in small inconspicuous print, the following:

ACCEPTANCE OF THIS LAYAWAY AGREEMENT DOES
NOT REQUIRE ACCEPTANCE OF THE REVOLVING
CHARGE ACCOUNT.⁹⁶

**AFFIRMATIVELY MISREPRESENTING THE CONSISTENCY OF CONTRACTUAL
TERMS BETWEEN PURPORTED VERBAL AND WRITTEN CONTRACTS**

170. Throughout their business models, the Defendants have affirmatively misrepresented that their written documents contain the same terms as those verbally disclosed and purportedly agreed to on the Defendants' sales call with the consumer, when this is not the case.

Misrepresentations as to Consistency of Contractual Terms in Pre-March 2006 Business Model

171. In the pre-March 2006 sales script, consumers are asked, "If you understand that this verbal agreement is legally binding . . . please say the word "OK,"⁹⁷ told "We are located in Maryland, and that is where this agreement is being made today,"⁹⁸ and also told "Your password to access your account is [password], and *this will serve as your electronic signature.*"⁹⁹

172. BlueHippo's Shipping Verification Form which was used prior to March 2006 explicitly stated on the second full sentence of the document, "*This form summarizes your purchase* and lets us verify some important information before shipping."¹⁰⁰ (Emphasis added).

173. BlueHippo's Pre-March 2006 Cover Letter stated, "Your account has been activated and your bank account will be debited according to the enclosed Shipping Verification Form."¹⁰¹

96 Ex. 46, March 2006 to Late 2006 Layaway Agreement (Emphasis in original).

97 Ex. 44, Pre-March 2006 Sales Script, at 26.

98 Ex. 44, Pre-March 2006 Sales Script, at 25.

99 Ex. 44, Pre-March 2006 Sales Script, at 27.

100 Ex. 42, Pre-March 2006 Shipping Verification Form (Emphasis added).

101 Ex. 41, Pre-March 2006 Cover Letter.

174. Prior to March 2006, BlueHippo referred to its documents generically as “paperwork” without clearly and conspicuously disclosing that the “Revolving Account Agreement” contained different terms and conditions.

175. In its pre-March 2006 script, BlueHippo stated, the following in relevant part:

Now [consumer first name] you understand to get your purchase before you pay in full you will need to show our auditors that you are credit worthy by paying 13 weeks worth of consecutive payments as agreed *and sending your paperwork back*.

It is very important that you send your paperwork back as quickly as possible so we can get you your computer.

After you’ve paid your down payment and a minimum of 13 consecutive weeks of payments [sic] *sent back your paperwork*, our auditors can approve your order for shipment.¹⁰²

176. Under the pre-March 2006 business model, the “Shipping Verification Form” itself contains several terms that were not disclosed, clearly or conspicuously or otherwise, in the pre-March 2006 advertisement, sales script or on any sales call, including the following:

Your merchandise is not kept in stock.

We reserve the right to substitute merchandise of equal or greater speed.

177. Under the pre-March 2006 Business Model, BlueHippo’s “Shipping Verification Form” asks consumers to sign the form under a statement which reads, “I have verified the accuracy of this Shipping Verification Form and agree to the enclosed Terms and Conditions.”

178. The following enclosed terms and conditions appeared in the “Terms and Conditions” to the “Shipping Verification Form,” but not in any pre-March 2006 advertisement, sales script or sales call:

¹⁰² Ex. 44, Pre-March 2006 Sales Script, at 25.

CHANGE IN TERMS. We may, at any time and subject to applicable law: . . (e) change any other terms and conditions of this Agreement relating to your Account (including increasing any Finance Charge or interest rate). Unless prohibited by applicable law, we may apply such changes or new terms to any outstanding balance of your Account on the effective date of the change and to any future balances incurred after that date. When required by applicable law, we will mail a notice of change(s) to you. . .

DEFAULT. . . After default or your death, and subject to the limitations or applicable law, we have the right to do any or all of the following: (i) reduce your Credit Limit or terminate your Account . . . (ii) require immediate payment of your entire Account balance including Same as Cash balances, all accrued but unpaid Finance Charges, and all Fees and other charges listed in this Agreement, (iii) require the immediate payment of liquidated damages, which shall be computed by subtracting any payments previously posted from the merchandise Subtotal amount due on your Shipping Verification Form and multiplying the result by 66%, and (iv) bring an action to collect all amounts owed. If you are in default you agree that the rate of interest shall be increased to 24% APR or the maximum allowed by law and that rate shall be applicable to any post-judgment interest as well. If you are in default you give us permission to draft your checking or savings account in any amount at any time until your account balance is paid in full. If we refer your Account for collection, we may, to the extent permitted by applicable law, charge you or collect from you our collection costs, of 25% of the unpaid amount, including court cost, disbursements and reasonable attorneys' fees of 33% of the unpaid amount.

PAYMENTS. . . You understand and agree that your merchandise will be shipped 3-12 weeks after our auditors approve your order for shipping, provided you are not in Default.

CONFIRMATION. You understand that you must also sign and return this Agreement and any other requested information prior to our auditors approving you for shipment. You agree that we may run payment confirmation software on your computer.

FINANCE CHARGES. The Finance Charge for each billing cycle is computed by multiplying the "Average Daily Balance" by the daily periodic rate of 0.0408219% (corresponding 14.9% Annual Percentage Rate) times the number of days in the billing cycle.

FEES. We may impose a Late Payment Fee of \$10 if we do not receive your required payment within 10 days after the Payment Due Date shown on your current Statement.

ADDITIONAL RIGHTS OF OURS. . . . We may investigate your credit and report to credit reporting agencies on the payment history of your Account.

AGREEMENT TO ARBITRATION. Any dispute between us arising out of this Agreement or the breach of this Agreement, including any claim against any of our affiliates, successors or assigns, or our employees, agents or officers, may at the choice of either party, be determined by individual (and not class) binding arbitration by the National Arbitration Forum, under the Code of Procedure then in effect.

Misrepresentations as to Consistency of Contractual Terms in "Layaway" Business Model from March 2006 to Late 2006

179. In the "Layaway" Sales Script used between March 2006 and late 2006, consumers were told, "If you understand that this layaway agreement . . . is legally binding, please say the word "OK"¹⁰³ and "Your password to access your account is [password], *and this will serve as your electronic signature.*"¹⁰⁴ (Emphasis added).

180. From March 2006 to late 2006, following the sales call, consumers were asked to sign a "Sales Order Form" which stated, "*This form summarizes your purchase* and lets us verify some important information before shipping."¹⁰⁵ (Emphasis added).

181. The March 2006 to late 2006 "Sales Order Form" contained several terms that were not disclosed, clearly or conspicuously or otherwise, in any manner, including the following:

Your layaway merchandise is not kept in stock and must be

103 Ex. 54, March 2006 to Late 2006 Layaway Sales Script, at 30.

104 Ex. 54, March 2006 to Late 2006 Layaway Sales Script, at 30.

105 Ex. 56, March 2006 to Late 2006 Sales Order Form (Emphasis added).

ordered.

We reserve the right to substitute similar merchandise.

182. During the March 2006 to late 2006 “layaway” business model, under the consumer’s signature line on the “Sales Order Form,” the Defendants stated, “Remember: Please sign and return this Sales Order and the enclosed Layaway Terms and Conditions.”

183. The “Layaway Agreement Terms and Conditions” Form the Defendants used from March 2006 until approximately June 2006 contained the following terms that were not disclosed in any advertisement, sales script, or sales call between March 2006 until the end of June 2006:

2. MINIMUM PAYMENT DUE: [W]hen you pay as agreed on this layaway purchase, the Auditors may, at their discretion, offer to finance your remaining layaway balance and ship your merchandise before your layaway merchandise is paid in full. . . . [I]f we deem ourselves in any way insecure, you may be required to pay your entire layaway purchase amount before your layaway purchase is shipped. . . . After you have been offered, and accepted, the terms of the Revolving Charge Agreement, please allow six (6) to eight (8) weeks for the completion of the purchasing, production, testing, and shipping phase of your layaway purchase.

3. DEFAULT: Subject to the limitations of applicable law, you will be in default under this Agreement upon (a) your failure to make at least the Total Minimum Payment when due, (b) bankruptcy or insolvency proceedings, . . . (d) your supplying us with misleading, false, incomplete, or incorrect information or (e) your payment being returned unpaid by your bank for any reason. After default, and subject to the limitations of applicable law, we have the right to (i) terminate your Account, in which case the terms of this Agreement will apply until full payment of the amount owing on your Account is received, (ii) require you to immediately pay your entire Account balance, including all Fees and other charges listed in this Agreement, as well as reasonable attorneys fees and court costs, and (iii) bring an action to collect all amounts owed, if you are in default you give us permission to draft your checking or savings account in any amount at any time until

your account balance is paid in full. [T]herefore, upon occurrence of your default you will be liable to us for the exact amount of your total payments to us prior to default as liquidated damages, and not as a penalty. Additionally, if your Account is in default, any special promotions, discounts or rebates initially offered to you can be revoked and the shipping of your computer will be delayed no less than six (6) weeks for each defaulted payment.

8. ACCURACY OF INFORMATION: [Y]ou agree that we may obtain employment and income records, a credit bureau report on you, verify your credit references and we may check any of the information provided on this application from whatever source we choose to verify it. Additionally, upon request, you agree to promptly give us accurate updated financial information about yourself.

11. SPECIAL PROMOTIONS: [I]f your Account goes into Default, at any time, you may be required to pay for those promotional free items and they will be added to your principal. . .

14. CHANGE OF TERMS. We may change or terminate any terms, conditions, services or features of your Account or this Agreement at any time. We may also add new terms, conditions, services or features to your Account or this Agreement. To the extent required by law, we will notify you as your address as shown on our records.

15. FEES. We may impose on your Account the following fees, which will be added to your Account when assessed: A) Late Payment Fee: if you fail to pay us the Total Minimum Payment Due in full by the Payment Due Date on your billing statement, you agree to pay a Late Payment Fee of \$15. B) Returned Check Fee: You agree to pay \$25 each time any payment check on your Account is returned unpaid by your bank or other financial institution for any reason.

19. AGREEMENT TO ARBITRATE DISPUTES. By signing below and to induce us to process and consider your layaway purchase, you and we agree that any and all claims, disputes, or controversies that we or our servicers or agents have against you or that you have against us, our servicers, agents, directors, officers, and employees, that arise out of your layaway purchase, the Agreement that you must sign to obtain the layaway purchase misrepresentation, whether under the common law or pursuant to federal or state statute or regulation, or otherwise, shall

be resolved by binding individual (and not class) arbitration by and under the Code of Procedure of the National Arbitration Forum ("NAF") in effect at the time the claim is filed . . .

184. The Defendants "Layaway Agreement Terms and Conditions" Form used from approximately June 2006 until late 2006 likewise contained material terms that were not clearly and conspicuously disclosed on any advertisement, sales script, or sales call including the following:

2. MINIMUM PAYMENT DUE: You've agreed to a non-refundable Activation Fee of \$99.00 to be drafted on [date]. [W]hen you pay as agreed on this layaway purchase, the Auditors may, at their discretion, offer to finance your remaining layaway balance and ship your merchandise before your layaway merchandise is paid in full. If the Auditors offer, and you choose to accept the terms of the Revolving Charge Agreement, and to finance the remaining balance on your Layaway Account, you will be required to accept the terms of the Revolving Charge Agreement before your merchandise is released for fulfillment. [I]f you have a change in address, if you request or change your payment draft dates, if you request or change your payment draft amount, if you request or change your payment draft frequency, if you have a change in employment, if you have a change in income, if you change the bank account we are drafting, . . . you may be required to pay your entire layaway purchase amount before your layaway purchase is shipped. All layaway payments are non-refundable unless a written request is received prior to the date any of this merchandise is ordered from our supplier. . . After you have been offered and accepted, the terms of the Revolving Charge Agreement, please allow six (6) to eight (8) weeks for the completion of the purchasing, production, testing, and shipping phase of your layaway purchase.

3. DEFAULT: Subject to the limitations of applicable law, you will be in default under this Agreement upon . . . (b) your violation of any other provision of this Agreement, [U]pon occurrence of your default you will be liable to us for the exact amount of your total payments to us prior to default as liquidated damages, and not as a penalty. Additionally, if your Account is in default any special promotions, discounts, or rebates initially offered to you can be revoked and any offer to finance your layaway balance will be delayed by six (6) weeks for each

defaulted payment.

8. ACCURACY OF INFORMATION: [Y]ou agree that we may obtain employment and income records, a credit bureau report on you, verify your credit references and we may check any of the information provided on this application from whatever source we choose to verify it. Additionally, upon request, you agree to promptly give us accurate updated financial information about yourself.

11. SPECIAL PROMOTIONS: Any special promotions, rebates, or free items (cash or other) included in your purchase are provided contingent upon your Account not going into default.

14. CHANGE OF TERMS: We may change or terminate any terms, conditions, services, or features of your Account or this Agreement at any time. We may also add new terms, conditions, services or features to your Account or this agreement [sic] To the extent required by law, we will notify you in advance of any change in terms or any new terms by mailing a notice to you at your address as shown on our records.

19. CHOICE OF LAW & VENUE: This Agreement shall be deemed to have been made, accepted and executed in the State of Nevada. Nevada law, without regard to choice of law, governs the interpretation, validity and enforcement of this Agreement. The venue for any action, dispute or proceeding with respect to this Agreement shall be Las Vegas, Nevada.

20. AGREEMENT TO ARBITRATE DISPUTES: By signing below and to induce us to process and consider your layaway purchase, you and we agree that any and all claims, disputes or controversies that we or our services or agents have against you or that you have against us, our services, agents, directors, officers and employees, that arise out of your layaway purchase, the Agreement that you must sign to obtain the layaway purchase, this agreement to arbitrate disputes, collection of the layaway purchase, or alleging fraud or misrepresentation, whether under the common law or pursuant to federal or state statute or regulation, or otherwise, shall be resolved by binding individual (and not class) arbitration by and under the Code of Procedure of the National Arbitration Forum ("NAF") in effect at the time the claim is filed.

21. AGREEMENT NOT TO BRING OR PARTICIPATE

IN CLASS ACTIONS: To the extent permitted by law, you agree that you will not bring, join or participate in any class action as to any claim, dispute or controversy you may have against us or our agents, services, directors, officers and employees. You agree to the entry of injunctive relief to stop such a lawsuit or to remove you as a participant in the suit. You agree to pay the attorney's fees and court costs we incur in seeking such relief.

Misrepresentations as to Consistency of Contractual Terms in Current Business Model

185. The Defendants misrepresent the consistency of contractual terms between the purported agreement reached by phone, the "Layaway Agreement" and the financing agreement.

186. In the current sales script, the Defendants state the following:

Alright [consumer's first name] the last part of our call is recorded to ensure accurate entry of your information. *It will also constitute our layaway agreement relating to your computer purchase.* You will be receiving a complete Welcome Kit that will also include a copy of everything I'm going over now.¹⁰⁶

[First name], Now I need you to enter your 4 digit pin on your telephone keypad and press pound *which will serve as your electronic signature for this agreement covering the purchase, and payments and terms you've just confirmed.*¹⁰⁷

If you understand that this legally binding agreement is being made in Virginia between you and BlueHippo Capital, headquartered in Virginia . . . please say the word "OK."¹⁰⁸

187. Elsewhere, the Defendants explicitly refer to a "Welcome Kit" Package and represent that the documents contained in the "Welcome Kit" Package parallel the disclosed terms and conditions on the consumer sales call, when this is true.

188. The Defendants state the following in the current sales script:

Alright [First Name] the last part of our call is recorded to ensure accurate entry of your information. *It will also constitute our*

106 Ex. 55, Current Sales Script, at 22 (Emphasis added).

107 Ex. 55, Current Sales Script, at 29 (Emphasis added).

108 Ex. 55, Current Sales Script, at 27.

*layaway agreement relating to your computer purchase. You will be receiving a complete Welcome Kit that will also include a copy of everything I'm going over now.*¹⁰⁹

[First name] within the next week you'll receive a welcome packet in the mail from us. Included in your welcome packet will be everything I've told you over the phone in writing and a couple of important forms that you need to sign and send back to us as soon as possible - ok?¹¹⁰ (Emphasis added).

189. Under the current business model, the "Welcome Kit" includes the "Retail Installment Contract" which contains many terms and conditions not clearly and conspicuously disclosed on the original sales call or in the "Layaway Agreement."¹¹¹

190. The following terms and conditions are contained in the "Retail Installment Contract" and not previously clearly and conspicuously disclosed on any advertisement, sales script or sales call:

WARRANTIES SELLER DISCLAIMS: Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this Contract, **the Seller makes no warranties, express or implied, on the Property, and there will be no implied warranties of merchantability or fitness for a particular purpose.** This provision does not affect any warranties covering the Property that the manufacturer may provide.

LATE CHARGES AND RETURNED CHECKS: If we receive your payment late, you agree to pay us the charge for late payments shown in the TILA box on the first page of this Contract, as well as any cost we pay to collect any late payment, as allowed by law. If we accept a late payment, your default is not excused and you cannot keep making payments late. Unless prohibited by applicable law, you also agree to pay the following fee for any check or other instrument you give us that is unpaid for any reason: \$20.00. If you are a Maryland resident, you agree to pay the fee if a check you give us is unpaid after the second presentment.

¹⁰⁹ Ex. 55, Current Sales Script, at 22 (Emphasis added).

¹¹⁰ Ex. 55, Current Sales Script, at 12 (Emphasis added).

¹¹¹ Ex. 9, Aff. of Angela Atkins, at para. 5 ("I feel like many of the terms and conditions in this paperwork was not explained to me during the intimal [sic] sales call.")

DEFAULT: You will be in default under this Contract if you fail to make any payment in full when such payment is due hereunder. You will be in default if you gave false or misleading information on your application relating to this Contract, if you become the subject of bankruptcy or insolvency proceedings, or, if you do not keep any other agreement in this Contract. If you are in default we may require you to pay at once the unpaid balance of the Amount Financed, the earned and unpaid part of the Finance Charge and all other amounts due under this Contract. Further, if you are in default you agree that the rate of interest shall be increased to 25% or the maximum rate allowed by law, and that rate shall be applicable to any post-judgment interest as well. Also, if you are in default, you give us permission to draft your checking or savings account in any amount at any time until your account balance is paid in full.

SPECIAL PROMOTIONS: Any special promotions, rebates or free items (cash or other) included in your purchase of the Property are provided contingent upon this Contract not going into default at any time between your purchase date and your final payment and you will receive them after all payments have been made. If this Contract goes into default at any time, you may be required to pay for those promotional free items and they will be added to the Amount Financed or you may become ineligible to receive these items, discounts, or rebates. You agree to acquire any applicable rebate forms by logging into your account at www.bluehippo.com.

ACCURACY OF INFORMATION/CREDIT REPORTS: All of the information you furnished to us is, to the best of your knowledge, complete and accurate. You agree that we may obtain employment and income records, a credit bureau report on you, verify your credit references and we may check any of the information provided on this application from whatever source we choose to verify it. You agree that the Department of Motor Vehicles may release your residence address to us should it become necessary to locate you. Additionally, upon request, you agree to promptly give us accurate updated financial information about yourself.

MISCELLANEOUS: You agree to notify us if you change your address. Until we receive notice of your new address we will continue to send notices to the last address you gave us for this Contract. You acknowledge that we may have required you to provide to our auditing department the following documentation for

identity, residence and employment verification purposes only: photocopy of valid state issued drivers license or identification card; photocopy of your federally issued social security card; photocopy of a current utility bill in your name and showing your current address; photocopy of a current pay stub in your name; copy of a current bank statement in your name showing a positive balance. You may not assign your rights under this Contract without our written permission. The Seller may sell or assign the Seller's rights in this Contract without your permission. This Contract constitutes the entire agreement between you and us relating to your purchase of the Property on credit from us and it replaces any other agreements between you and us regarding this matter. Any change in this Contract must be written and signed by you and us. If any provision of this Contract is finally determined to be void or unenforceable under applicable law, rule or regulation all other provisions of this Contract shall still be valid and enforceable. **Financing under this Agreement is contingent upon, and this Agreement shall not take effect until, Seller determines that Buyer has satisfied all of the terms and conditions for financing set forth in the Layaway Agreement between Buyer and Seller.** (Emphasis in original).

191. The "Sales Order Form" used in the current business model, states, "*This form summarizes your purchase* and verifies some important information before shipping."¹¹²

192. The following terms are stated in the "Sales Order Form," but are not found in any advertisements, sales scripts, or sales calls:

We reserve the right to substitute similar merchandise.¹¹³

Your layaway merchandise is not kept in stock and must be ordered.¹¹⁴

Mail-in rebate and free items applicable to non-defaulting customers after payment in full.¹¹⁵

193. The shipment of "similar" merchandise has resulted in consumers not getting what

¹¹² Ex. 52, Current Sales Order Form (Emphasis added).

¹¹³ Ex. 52, Current Sales Order Form.

¹¹⁴ Ex. 52, Current Sales Order Form.

¹¹⁵ Ex. 52, Current Sales Order Form.

they ordered.¹¹⁶ Consumer B. B. of Tennessee, for example, ordered a computer that had three disc drives including a floppy drive. The Defendants actually sent him a computer that had only one CD-ROM drive.¹¹⁷

194. In the current “Sales Order Form” under the signature line reserved for the consumer’s signature, the Defendants state the following, in relevant part, “Please sign and return this Sales Order and the Layaway Agreement.”

195. Under the current business model, the “Layaway Agreement” states, “Below is a printed version of the agreement you entered into on [date] and agreed to with your electronic signature.”¹¹⁸

196. The following terms are contained in the current “Layaway Agreement” and are not clearly and conspicuously disclosed in the current sales script, any advertisement, or consumer sales call:

I also understand that there will be a bounced check fee of \$20.00 if my payment is rejected or returned by my bank for any reason.¹¹⁹

I have purchased a brand new Dell Desktop which includes the FREE Digital Camera and the FREE Color Printer *which I will receive after I’ve made all 26 payments as agreed.*¹²⁰ (Emphasis added).

116 Ex. 19, Aff. of Linda Taylor, at para. 12 (“I had paid \$50.00 extra to get a flat panel monitor and when my monitor arrived, it was a bulky heavy one instead of a flat screen. I had to call many times and talk to many people in order to get the correct monitor. It took an additional 2-3 months to get the correct monitor.”); See, also., Ex. 63, Aff. of Linda McIntosh, at para. 6 (“I wanted to get a computer in part to have access to voice recognition software so that I could use the computer. Because of my multiple sclerosis I am unable to use a computer with my hands. The salesperson explicitly told me that voice recognition software was included with the computer and that the computer could handle this software. This was a major selling point for me. I have not seen any reference to voice recognition software in any of the documents that were sent to me later or online. The salesperson also told me the monitor was 19 inches. The documents I received later and my information online referenced a 17-inch monitor.”).

117 Ex. 7, Aff. of Billy Shane Bowling, at para. 13.

118 Ex. 51, Current Layaway Agreement.

119 Ex. 51, Current Layaway Agreement.

120 Ex. 51, Current Layaway Agreement (Emphasis added).

197. Despite the language, “Below is a printed version of the agreement you entered into on [date] and agreed to with your electronic signature,” the “Layaway Agreement” itself seems to recognize that it contains different terms.

198. The second-to-last sentence on the current “Layaway Agreement” states, “I understand that this Agreement is my complete agreement with BlueHippo and replaces any previous one I may have had.”¹²¹

199. In the current business model, the Defendants’ sales representatives have also actively misrepresented the consistency of statements within the unrecorded portion of the sales script and the recorded portion of the sales script, which the Defendants use as evidence of a verbal agreement.

200. One Tennessee consumer was explicitly told, “*There will be nothing new in the recording part. I will repeat all of the information I’ve taken from you.*”¹²²

201. Another Tennessean was told, “*And for your security, I am going to tell you all of the information I told you in the prerecording part in this recording for your safe . . . security as well.*”¹²³

DECEPTIVELY USING “NO CATCH, NO STRINGS ATTACHED” AND OTHER SWEEPING CLAIMS

202. The Defendants, throughout all of their business models, have used sweeping language such as “There’s no catch and no strings attached” to deceptively convey that their offers are not subject to the many restrictions, terms, and conditions contained, albeit inadequately, in

¹²¹ Ex. 51, Current Layaway Agreement.

¹²² Ex. 33, Verification Tape of Carroll Butler 3809550 (Emphasis added); See also, Ex. 34, Verification Tape of Donald Smith 3118845 (BHC stating “That’s going to be shipped out to you once you have done three payments” in response to consumer question, “Okay, and when do I get the computer shipped out and all?”)

¹²³ Ex. 35, Verification Tape of Eric Monger 3898655 (Emphasis added).

the Defendants purported contractual documents.

Use of Deceptive Sweeping Language in Pre-March 2006

203. Prior to March 2006, BlueHippo referred to its offer as being subject to “no catches and no strings attached” and made other sweeping claims which were not true.

204. BlueHippo stated prior to March 2006 and shortly thereafter, the following:

*There's no catch and no strings attached.*¹²⁴

If you would like to finance a computer through BlueHippo, *then all you need to do* is go down to your local bank and set up a checking account. In most cases, it is free and easy to set up.¹²⁵

All we ask is that you build a short credit history with us - *it's so easy to do.*¹²⁶

If you have a checking account and a home phone - *all we ask* is that you build a short credit history with us.¹²⁷

Instead of checking credit, *we ask you* to build a short credit history with us - *it's that easy.*¹²⁸

Now, because we don't check your credit, *all we ask* is that you build a short credit history with us.

This is pretty easy, *all you have to do* is make a small down payment and then pay just 13 weeks of payments before you are approved for shipment. Once approved, you will get your new PC in just 4-6 weeks. Then we finance your balance, order your computer, and have it shipped directly to your home.

Once you get your computer, *you just continue making your*

124 Collect. Ex. 32, BH-TV1 (referencing only having a checking or savings account and being able to afford a payment of \$35/week for 12 months as the only conditions); Collect. Ex. 32, BH-RA1 and Collect. Ex. 32, BH-RA3 (both referencing only a checking or savings account and an ability to afford an unspecified weekly payment as the only conditions); Collect. Ex. 32, BH-RA6, Collect. Ex. 32, BH-RA7, BH-RA9, Collect. Ex. 32, BH-RA13, Collect. Ex. 32, BH-RA15; Collect. Ex. 32, BH-RA20, Collect. Ex. 32, BH-RA23, (referencing checking account, phone and ability to pay \$35 weekly payments for 12 months as the only conditions) (Emphasis added).

125 Ex. 44, Pre-March 2006 Sales Script at 3 (Emphasis added).

126 Collect. Ex. 32, BH-PR4.

127 Collect. Ex. 32, BH-RA35.

128 Collect. Ex. 32, BH-RA26.

payments until you are fully paid off.¹²⁹

Since we don't check your credit, we do ask that you build a short credit history with us by making [3] months worth of payments before we ship the computer. *It's that simple.*¹³⁰

Unlike other financial companies, we don't check your credit and measure you based on some score. Instead, *all we ask* is that you build a little credit history with us by paying a small, one-time activation fee. Then pay just 13 consecutive weeks of layaway payments, and we will finance the balance of your purchase price, order, test, and ship your computer directly to your home.¹³¹

Since we can approve you regardless of your past credit history, we do require that all of our customers have a checking account and a home phone number. *It is the only way that we can offer this financing opportunity without a more extensive application process.*

If you would like to finance a computer through BlueHippo, then all you need to do is go down to your local bank and set up a checking account. In most cases, it is free and easy to set up.¹³² (Emphasis added).

Deceptive Use of Sweeping Terms March 2006 to Late 2006

205. From March 2006 to late 2006, the Defendants used sweeping terms that implied that their offer was not subject to the many restrictions, terms and conditions that it actually was.

206. From March 2006 to late 2006, the Defendants stated the following, in relevant part:

All we ask is that you build a short credit history with us *-it's so easy to do.*¹³³

Instead, *you just* build a short credit history with us *-it's that easy.*¹³⁴

129 Collect. Ex. 32, BH-RA26.

130 <http://web.archive.org/web/20040404002511/bluehippo.com/product001.asp> (last visited June 12, 2008); http://webarchive.org/web/20040723121028/www.bluehippo.com/desktop_computer.asp (last visited June 12, 2008).

131 <http://web.archive.org/web/20060420223715/www.bluehippo.com/ourProgram.asp> (last visited June 12, 2008) (Emphasis added).

132 Ex. 44, Pre-March 2006 Sales Script, at 3 (Emphasis added).

133 Collect. Ex. 32, BH-RA39 and Collect. Ex. 32, BH-RA40.

134 Collect. Ex. 32, BH-RA53.

If you would like to finance a computer through BlueHippo, then all you need to do is go down to your local bank and set up a checking account.¹³⁵

Now, because we don't check your credit, *all we ask* is that you build a short credit history with us. *This is pretty easy, all you have to do* is make a small activation payment and then pay just 6 short weeks of layaway payments, then we finance your balance, order your computer and have it shipped directly to your home. Once you get your computer, *you just continue making your payments until you are fully paid off.*¹³⁶

Deceptive Use of Sweeping Statements in Current Business Model

207. From late 2006 and continuing to the present, the Defendants have used sweeping terms that imply that their offer is not subject to the many restrictions, terms, and conditions which are actually contained in the Defendants' contractual documents.

208. The Defendants state the following, in relevant part:

Now, because we don't check your credit, *all we ask* is that you build a short credit history with us by making a small down payment - which doesn't have to be paid today - and then pay just 9 short weeks worth of layaway payments. Then we finance, order and ship your computer directly to your home. Once you get your computer, *you just continue making your payments until you are fully paid off.*¹³⁷

All we ask is that you build a short credit history with us - it's so easy to do.¹³⁸

All we ask is that you have an active checking account.¹³⁹

**FAILING TO CLEARLY AND CONSPICUOUSLY DISCLOSE
NO OR LIMITED REFUND POLICY**

135 Ex. 54, March to Late 2006 Layaway Sales Script, at 3.

136 Ex. 54, March to Late 2006 Layaway Sales Script, at 3 (Emphasis added).

137 Ex. 55, Current Sales Script, at 4 (Emphasis added).

138 Collect. Ex. 32, BH-RA83 (Emphasis added).

139 Collect. Ex. 32, BH-RA69 (Emphasis added).

209. Throughout all of their business models, the Defendants have failed to clearly and conspicuously disclose their no refund, extremely limited refund policy, or highly restrictive “store credit only” policy. The Defendants have also employed a no refund, limited refund, or store-credit only refund policy without clearly and conspicuously disclosing the material terms of the transaction.

Failure to Adequately Disclose No-Refund Policy Prior to Late June 2006

210. While the Defendants changed their business model in March 2006, the Defendants continued a no-refund policy for payments until late June 2006.

211. None of the Defendants’ advertisements prior to the change in the Defendants’ refund policy in late June 2006 clearly and conspicuously disclosed the non-refundability of payments.¹⁴⁰

212. The following advertisements, which first aired or were originally published before the end of June 2006, did not reference the non-refundability of payments at all:

BH-PR1, BH-PR2, BH-PR3, BH-PR4, BH-PR5, BH-PR6, BH-PR7, BH-PR8, BH-PR9, BH-PR10, BH-PR11, BH-PR12, BH-PR13, BH-PR14, BH-PR15, BH-PR16, BH-PR17, BH-PR18, BH-PR19, BH-PR20, BH-PR21, BH-PR22, BH-PR23, BH-PR24, BH-PR25, BH-PR26, BH-PR27, BH-PR29, BH-PR30, BH-PR31, BH-PR32, BH-PR33, BH-PR34, BH-PR35, BH-PR36, BH-RA1, BH-RA2, BH-RA3, BH-RA4, BH-RA5, BH-RA6, BH-RA7, BH-RA8, BH-RA9, BH-RA10, BH-RA11, BH-RA12, BH-RA13, BH-RA14, BH-RA15, BH-RA16, BH-RA17, BH-RA18, BH-RA19, BH-RA20, BH-RA21, BH-RA22, BH-RA23, BH-RA24, BH-RA25, BH-RA26, BH-RA27, BH-RA28, BH-RA29, BH-RA30, BH-RA32, BH-RA33, BH-RA34, BH-RA35, BH-RA36, BH-RA37, BH-RA38, BH-RA39, BH-RA40, BH-RA41, BH-RA42, BH-RA43, BH-RA45, BH-RA46, BH-RA47, BH-IN1, BH-IN2, BH-

¹⁴⁰ Ex. 11, Aff. of Kathy Collins, at para. 11 (“I did not understand that all the money I paid into BlueHippo was non-refundable.”); Ex. 13, Aff. of Angela Ard, at para. 11; Ex. 18, Aff. of Christine Pruitt, at para. 12; Ex. 23, Aff. of Carl Lewis, at para. 11; Ex. 24, Aff. of Karen Williams, at para. 12; Ex. 26, Aff. of Idell Robertson, at para. 12; Ex. 29, Aff. of Robert Hughes, at para. 11 (“I was never told about a cancellation policy.”)

TV1, BH-TV2, BH-CL1, BH-CL2, BH-CL3, BH-CL4, BH-CL5, BH-CL8, BH-CL10, BH-CL11, BH-CL12, BH-CL13, BH-CL14.

213. The only advertisement which originally aired or was originally published prior to June 2006 that contained a reference to the non-refundability of payments is BH-TV3.

214. This advertisement, BH-TV3, flashed the following statement on half of the screen for less than five seconds in small print:

This offer is from BlueHippo Capital, LLC (8000 Towers Crescent Drive, 13th floor, Vienna, Virginia 22182). Payments start as low as \$24.99 a week and depend on the computer model purchased. A \$99 initial fee applies. Advertised model is available for initial fee plus weekly layaway payments of \$39.99 for 52 weeks. Total price of advertised model, including shipping and handling is \$1,799.48 after \$300 mail-in rebate and initial payment. Financing may be available for customers who make 13 consecutive payments. Separate terms and conditions apply for financing offer. Products ship after all payments are made, or at time of financing for eligible customers. Please allow 2-3 weeks for ordering and shipping. No cash refunds will be given; customers canceling prior shipment will be given store credit at BlueHippo.com. *All payments are non-refundable.* Free items are only provided to customers that pay as agreed. Must be 18 years or older and have an active checking account. (Emphasis added).

215. The Defendants' advertisement, BH-TV4, contained a similar pop-up disclosure as BH-TV3, but is completely illegible in the format presented.

216. Because of the short time period, the small font, and placement within the disclosure, the disclosure of the non-refundability of payments was not clear and conspicuous in BH-TV3 or in any other advertisement that originally aired or was originally published prior to July 2006.

217. In one of BlueHippo's sales scripts used prior to the change in refund policy in late June 2006, the only reference to the non-refundability of payments to BlueHippo is contained in the second-to-last line on the last page of the sales script *after* the consumer has given their

checking account numbers and other account information, *after* the consumer has stated two “okays,” and *after* the consumer is told the following, “[First name of consumer], *you have purchased a brand new Gateway Desktop computer. Your password to access your account is [password], and this will serve as your electronic signature.*”¹⁴¹

218. The relevant part of the sales script used prior to the change in refund policy in late June 2006 states in the second to last line on the last page of the twenty-six page pre-March 2006 sales script, the following: “If you understand that this verbal agreement is legally binding and all payments made are non-refundable please say the word OK.”¹⁴²

219. In another BlueHippo sales script used prior to the change in the refund policy in late June 2006, the only reference to the non-refundability of payments to BlueHippo is contained in the second-to-last paragraph *after* the consumer has given their checking account numbers and other account information, *after* the consumer has stated two “okays,” and *after* the consumer is told the following, “And you do understand that *you have purchased a new Gateway desktop computer* plus the upgrade pack including upgrade computer, 3 in 1 printer scanner and 20 inch plasma TV and you understand that this verbal agreement is legally binding and payments are non-refundable.”

220. According to the Defendants’ sales scripts during this time, the consumer already purchased the computer before they were told anything about the non-refundability of payments.

221. Prior to the change in the Defendants’ refund policy at the end of June 2006, the disclosure of the non-refundability of payments was not made in a timely fashion and was presented only once at the end of a long sales script as well as a long compound question.

¹⁴¹ Ex. 44, Pre-March 2006 Sales Script, at 26.

¹⁴² Ex. 44, Pre-March 2006 Sales Script, at 26.

222. Timeliness questions aside, based on a review of some “verification” tapes from Tennessee consumers, the statement about non-refundability in the sales scripts used prior to the change in the Defendants’ refund policy was often delivered rapidly and with a cadence that made it extremely difficult for the consumer to understand.

Disclosure of \$175.00 “Early Termination” Fee

223. Around the end of June 2006 and lasting until late 2006, the Defendants implemented a refund policy that purportedly required consumers to forfeit \$175.00 to cancel their purchase.

224. The non-refundability of the initial activation payment, usually \$99.00 but up to \$124.99, was not clearly and conspicuously disclosed from late June 2006 until late 2006.

225. Because of the non-refundability of the initial activation payment, consumers were actually required to forfeit \$175.00 *plus* their “activation payment” to cancel their order with the Defendants.

226. Nowhere in the Defendants’ advertisements, sales scripts, or sales calls during the time the \$175.00 “early termination” fee was used was it clearly and conspicuously disclosed that the activation payment was non-refundable.

227. Nowhere in the Defendants’ advertisements, sales scripts, or sales calls during the time the \$175.00 “early termination” fee was used was it clearly and conspicuously disclosed that the consumer was really required to forfeit \$175.00 plus their initial “activation payment.”

228. While the \$175.00 “early termination” fee misstated the total amount the consumer had to forfeit, even the forfeit of the \$175.00 dollars was not clearly and conspicuously disclosed on any of the Defendants’ advertisements during the time the policy was implemented.

229. The following advertisements, which aired or were originally published during the time the \$175.00 “early termination fee” policy was implemented, did not reference the \$175.00 “early termination fee” at all:

BH-PR37, BH-PR38, BH-PR39, BH-PR40, BH-PR43, BH-PR44, BH-PR45, BH-PR46, BH-PR47, BH-PR48, BH-PR49, BH-PC1, BH-PC2, BH-RA48, BH-RA49, BH-RA50, BH-RA51, BH-RA52, BH-RA53, BH-RA54, BH-RA55, BH-RA57, BH-RA59, BH-RA60, and BH-RA61.

230. The only advertisement that that referenced the \$175.00 figure was BH-TV5, a television advertisement in Spanish, which translated states:

This offer is from BlueHippo Capital, LLC (3690 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89106). Payments can be from \$24.99 per week depending on the model of the purchased computer. An activation fee of \$99 applies. The advertised model is available with an activation fee plus weekly installments of \$39.99 for 52 weeks. The total price of the advertised mode, including shipping and handling, is \$1799.48, after the rebate by mail. Financing is available for customers who make 6 on-time payments. Different terms and conditions apply to the financing offer. Products are sent only after all payments are made or when financing is determined, for eligible customers. A charge of \$175 applies for early payments. After the product is sent, payments cannot be refunded. Free items are only provided to customers who have paid accordingly.

231. In BH-TV5, which is spoken in Spanish, the Defendants use the term “pronto pago” in connection with the \$175 charge. Properly translated, “pronto pago” means “early payments” not cancellation.

232. The Defendants \$175.00 “early termination charge” was also not clearly and conspicuously disclosed in the Defendants’ sales script that was used during the time the policy was implemented.

233. During the March 2006 to late 2006 business model, the only reference to the

Defendants' \$175.00 early termination charge was found in the following statement on the second to last page of the March 2006 to late 2006 sales script:

Now [consumer first name], let me tell you about our refund policy. You can get a refund at any time prior to when we order your computer, but there is a \$175 early termination charge - just like with most cell phone providers - this helps pay for our marketing and processing costs.¹⁴³

234. The disclosure of the \$175 "early termination charge" was made for the first time *after* the consumer gave his or her checking account number, *after* the consumer confirmed his or her address and *after* the following statement was made:

[Consumer's first name], *you have purchased a brand new Gateway Desktop computer* which includes the FREE software, FREE color printer AND the FREE 20 inch super-thin LCD television. Your password to access your account is [insert password], and this will serve as your electronic signature.¹⁴⁴

235. According to the Defendants' sales scripts during the time the \$175.00 "early termination fee" refund policy was implemented, the consumer already purchased the computer before they were told anything about the \$175.00 "early termination fee."

236. During the time the \$175.00 "early termination fee" policy was implemented, the disclosure of the fee was not made in a timely fashion and was presented for the first and only time at the end of a long compound question contained within a long sales script.

237. Timeliness questions aside, based on a review of some "verification" tapes from Tennessee consumers, the statement about the \$175.00 early termination fee in the sales scripts used during the time the Defendants' implemented the \$175.00 early termination fee was often delivered rapidly and with a cadence that made it extremely difficult for the consumer to

¹⁴³ Ex. 54, March 2006 to late 2006 "Layaway" Sales Script, at 28.

¹⁴⁴ Ex. 54, March 2006 to Late 2006 Layaway Sales Script, at 28 (Emphasis added).

understand.

238. Further, the sales script used during the time the \$175.00 early termination fee was implemented did not clearly and conspicuously disclose that by the terms of the “Layaway Agreement,” consumers had to submit requests for refunds in writing - otherwise their payments were non-refundable.¹⁴⁵

Disclosure of No-Refund/ Store Credit Policy Under the Current Business Model

239. Under the Defendants’ current business model, the fact that consumers’ payments are non-refundable and can be used only for “store credit” is not clearly and conspicuously disclosed in the Defendants’ advertisements.¹⁴⁶

240. The following advertisements, which aired or were originally published during the current business model, do not reference the non-refundability of payments or purported use for store credit at all:

BH-PR50, BH-PR51, BH-PR52, BH-PR53, BH-PR54, BH-PR56, BH-PR57, BH-PR58, BH-PR59, BH-PR60, BH-PR61, BH-PR62, BH-PR63, BH-PR64, BH-PR65, BH-PR66, BH-PR67, BH-PR68, BH-PR69, BH-PR70, BH-PR71, BH-PR72, BH-PR73, BH-PR74, BH-PR75, BH-PR76, BH-PR77, BH-PR78, BH-PR81, BH-PR82, BH-PR83, BH-PR84, BH-PR85, BH-PR86, BH-PR87, BH-PR88, BH-PR89, BH-PR90, BH-PR92, BH-PR96, BH-PR97, BH-PR98, BH-PR99, BH-PR100, BH-PR101, BH-PR102, BH-PR103, BH-PR104, BH-PR105, BH-PR106, BH-PR107, BH-PR108, BH-PR109, BH-PR110, BH-PR111, BH-PR112, BH-PR113, BH-RA58, BH-RA63, BH-RA64, BH-RA65, BH-RA66, BH-RA67, BH-RA68, BH-RA69, BH-RA70, BH-RA71, BH-RA72, BH-RA73, BH-RA74, BH-RA75, BH-RA76, BH-RA77, BH-RA78, BH-

145 Ex. 66, Aff. of Grace Penson, at para. 12 (“When I told BlueHippo that I wished to cancel my contract, BlueHippo stated that my money was refundable but that I would have to pay [sic] \$175.00 cancellation fee. They first said that they [sic] money would be returned to my checking account but after a few weeks it had still not arrived. I called BlueHippo several times to check on the status of my refund and I was told that I could expect a check in the mail. As of the day of signing this affidavit, nearly two years, later, I have not received my promised refund from BlueHippo.”)

146 See Ex. 61, Aff. of Jeremy Kirby, at para. 11 (“When I ordered the computer, I did not understand that all the money I paid into BlueHippo was non-refundable.”); Ex. 5, Aff. of Patty Serda, at para. 11.

RA79, BH-RA80, BH-RA81, BH-RA82, BH-RA83, BH-RA85, BH-RA86, BH-RA88, BH-RA89, BH-RA90, BH-RA91, BH-RA93, BH-RA95, BH-RA96, BH-RA97, BH-PC3, BH-CL6, BH-CL7, BH-CL15, BH-CL16, and BH-CL17.

241. Advertisements BH-TV6, BH-TV7, and BH-TV8, which first aired or were originally published during the current business model, appear to have some sort of disclosure, which is illegible.

242. Based on a review of some “verification” tapes from Tennessee consumers, the statement about the Defendants’ no refund/store credit policy is often delivered rapidly and with a cadence that made the policy very difficult for the consumer to understand.¹⁴⁷

243. Aside from the adequacy and timeliness of disclosures of the no-refund/store credit policy, the Defendants represent that consumers have many choices if they decide to cancel their order and apply their payments towards store credit when this is not the case.

244. The Defendants state in their current sales script the following, in relevant part:

Now [insert name] you can cancel your order at any time prior to shipment - and while we don't give cash refunds - we will give you store credit that you can use on over 3 dozen desktops, laptops, monitors, TVs and more at BlueHippo.com. [A]s I mentioned previously [first name] you can cancel your order at any time prior to shipment - and while we don't give cash refunds - we will give you store credit that you can use on over 3 dozen desktops, laptops, monitors, TVs and more at BlueHippo.com.

245. The Defendants’ store credit policy is largely illusory. Consumers effectively are forced to either give up their money or continue making payments because the merchandise offered for store credit at www.bluehippo.com is more expensive, as expensive, otherwise priced

¹⁴⁷ Ex. 12, Aff. of Cynthia Brunat, at para. 13; Ex. 20, Aff. of Brenda Lowrance, at para. 11; Ex. 21, Aff. of Cari Wilson, at para. 11; Ex. 27, Aff. of Allen Hubbard, at para. 11; Ex. 30, Aff. of Rosie Cannon, at para. 11; See also, Ex. 31, Aff. of Thelma Harrison, at para. 5 (“The BlueHippo salesperson represented to me that I could cancel anytime without obligation.”)

so high as to deter the use of store credit, or for merchandise for which the consumer would have no use.¹⁴⁸

246. During the time in which “store credit” was offered, only a small percentage of the Defendants’ consumers with billing addresses in Tennessee have applied previous payments as store credit for other merchandise.¹⁴⁹ As of the date of filing, the Defendants have not, counter to an agreed pre-filing discovery order that they signed, provided the percentage of consumers with billing addresses in Tennessee who have redeemed an item for store credit.

247. As of July 31, 2008, the Defendants only sold desktops, laptops, monitors and phone cards in \$100 increments on the web site, www.bluehippo.com. Previously, the Defendants have also offered various merchandise with the Defendants’ mascot and logo on their website, www.bluehippo.com.¹⁵⁰

148 Ex. 2, Aff. of Tina White, at para. 16 (“I asked them about refunding my money. They told me they would only give me store credit. However, the store credit would only allow me to buy expensive merchandise through the same program. My choices were only to wait it out and possibly get my computer or get store credit and order another product and have the same problem.”); Ex. 5, Aff. of Danika Blunt, at para. 11 (“When my computer did not arrive on time, I asked BlueHippo about canceling and they told me that I would only be able to use the money towards another product such as a laptop or a television. I decided that I would wait and keep making payments because I already paid so much money and enough time had gone by. I have a limited income.”); Ex. 16, Aff. of Rebecca Good, at para. 15 (“When I canceled my account, the BlueHippo representative told me I would receive store credit in the amount I have already paid. I do not want store credit from BlueHippo. I have checked the BlueHippo website and have found there is nothing I can afford on the website.”); Ex. 17, Aff. of Deldra Wells, at para. 11 (“When I spoke to a representative, he told me I could only get store credit. I looked on the website and did not see any merchandise I could use since I did not have a computer.”); See also, Ex. 27, Aff. of Allen Hubbard, at para. 13 (“After I canceled my computer that I ordered in September of 2008 [sic should read 2007], I attempted to use my store credit in February 2008 to order 22-inch flat-screen monitor. However, BlueHippo did not use my money that they had and wanted to set up another payment plan where I would pay 49.99 a week. I declined to do this.”)

149 See Ex. 61, Aff. of Jeremy Kirby, at para. 13 (“Blue Hippo stated that my money was nonrefundable and I think this is unfair. They told me that I could use my credit in their online store. However, this was frustrating since I did not have a computer to access the internet. After I finally bought a computer from another company, I accessed the online Blue Hippo store and used part of my credit to purchase a \$600.00 monitor around June of 2008. As of the date of signing this affidavit in November of 2008, I have not received my monitor.”); Ex. 30, Aff. of Rosie Cannon, at paras. 12 (“When BlueHippo told me that they would not refund my money, I asked for store credit and then decided to order my grandson a twenty inch monitor. I understood that I had paid enough in order to receive this monitor. Four of [sic] five weeks later, I noticed that Blue Hippo was taking \$9.99 out of my checking account every week. I did not authorize this deduction. Again, I had to put a “stop payment” on my account which cost me another \$25.00. I have not received a computer, free merchandise, the twenty inch monitor or a refund.”)

150 See, Ex. 69, BlueHippo WebArchive Documents (showing only items available for purchase to be laptops,

248. For the consumers who do not already possess a computer, the store credit would be largely illusory as it could only be applied to another, most likely more expensive computer, a computer monitor for the computer that they do not likely possess, a plasma screen television which is also likely to be more expensive than their original purchase, a phone card in \$100 increments, or merchandise with BlueHippo's mascot.

MISREPRESENTING SHIPPING DATES

249. The Defendants have misrepresented the shipping date of their products to consumers in Tennessee.

250. The Defendants consistently represent either implicitly or explicitly that the consumer stands to receive their computer or other product shortly after their order when this is not the case.¹⁵¹

desktops, monitors, plasma televisions, and phone cards in \$100 increments).

151 Ex. 11, Aff. of Kathy Collins, at para. 12 (consumer understood she would receive computer after third payment); Ex. 21, Aff. of Cari Wilson, at para. 5 (thought she would receive computer in four weeks); Ex. 26, Aff. of Idell Robertson, at para. 13 (30 days); Ex. 28, Aff. of Jo Ann Qualls, at para. 8; Ex. 31, Aff. of Thelma Harrison, at para. 5 (4-6 weeks); Ex. 4, Aff. of Connie Roberts, at para. 9, 14 (5 payments); Ex. 30, Aff. of Rosie Cannon, at para. 8 (4-5 payments); Ex. 29, Aff. of Robert Hughes, at para. 5 (6 weekly payments); Ex. 25, Aff. of Barbara Smith, at para. 5 (6-9 weeks); Ex. 27, Aff. of Allen Hubbard, at para. 14 (9 payments); Ex. 5, Aff. of Patty Serda, at paras. 12-13 ("It was my understanding that I would receive the computer after three months of payments . . . I have called BlueHippo to check on the status of my order. They told me my computer would arrive in three months from my order date. After I called after three months, they told me that it would be shipped after 6 months. As of this date [May 8, 2008] I have not received a computer or any free merchandise from BlueHippo."); Ex. 18, Aff. of Christine Pruitt, at para. 14; See also, Ex. 5, Aff. of Danika Blunt, at para. 8, 13 ("I have called Blue Hippo to ask about the delivery of my computer and every person that I talked to always told me, 'the tracking number is on its way.' As of this date [May 15, 2008], I have not received a computer or any free merchandise from BlueHippo."); Ex. 7, Aff. of Billy Bowling, at para. 11 (told 3 months); Ex. 8, Aff. of Jessica King, Attach. B ("Based on your payment history so far, provided you continue making your payments as agreed, your computer should be ready to order, build, finance and ship shortly."); Ex. 9, Aff. of Angela Atkins, at para. 14, 13 (3 months) ("I have called BlueHippo to check on the status of my order. The first time I called in August they said it was in the mail. Two weeks later, they told me it was in the warehouse waiting to be shipped. As of this date [May 21, 2008] I have not received a computer or any free merchandise from BlueHippo."); Ex. 12, Aff. of Cynthia Brunat, at paras. 5, 10 (2 months worth of payments) ("After I did not receive the computer, I called BlueHippo numerous times to find out when I would receive my computer. They always told me that my computer would be shipped in five to ten (5 to 10) business days."); Ex. 14, Aff. of Nora Shrewsbury, at paras. 13, 15 ("I called BlueHippo around February 6, 2008 to check on the status of my order. They told me my computer would arrive in approximately two (2) more weeks. As of this date [February 29, 2008] I have not received a computer or any free merchandise from BlueHippo.") ("It was my understanding that I would receive the computer after the ten (10) payments."); Ex. 14, Aff. of Shinetta Berry, at para. 11 ("I did not

251. The Defendants have made the following statements concerning the date of shipment of the consumer's computer:

*And we say you CAN get a brand new computer right now, even with less than perfect credit.*¹⁵²

*Get Yours Now.*¹⁵³

*Get Yours NOW the Easy BlueHippo® Way!*¹⁵⁴
*Get your new computer today.*¹⁵⁵

*Get Your New Computer Now!*¹⁵⁶

*Get your brand new, computer now . . .*¹⁵⁷

*Call today and receive your new computer.*¹⁵⁸

*So get your new computer today.*¹⁵⁹

*So call today and get your laptop.*¹⁶⁰

*Didn't Get a New Computer for the Holidays? Get One Now Without a Credit Check!*¹⁶¹

*Call BlueHippo today and tell us where you want your new laptop delivered.*¹⁶²

receive the computer in time to give to my son as a graduation present.”); Ex. 16, Aff. of Rebecca Good, at para. 14 (“I called BlueHippo and told the representative I no longer wished to make payments to the company. The representative would tell me I just needed to make two more payments. After I made the two additional payments, I still did not receive my computer. I called again and the representative told me I needed to make more payments and the computer would ship. I continued to make payments and never received my computer. Finally, I called and cancelled my account.”); Ex. 16, Aff. of Rebecca Good, at para. 156 (9 payments); Ex. 19, Aff. of Linda Taylor, at para. 10 (“I thought that I would be receiving my computer and free merchandise right away.”); Ex. 20, Aff. of Brenda Lowrance, at para. 12 (after half the payments); Ex. 24, Aff. of Karen Williams, at para. 10 (after half the payments).

152 Collect. Ex. 32, BH-RA67; Collect. Ex. 32, BH-RA78.

153 Collective Ex. 69, http://web.archive.org/web/20050706104033/www.bluehippo.com/plasma_financing.asp.

154 Collect. Ex. 32, BH-PR35; Collect. Ex. 32, BH-PR43.

155 Collect. Ex. 32, BH-RA90.

156 Collect. Ex. 32BH-PR10; Collect. Ex. 32BHPR11.

157 Collect. Ex. 32, BH-PR34; Collect. Ex. 32BH-PR35.

158 Collect. Ex. 32, BH-RA91.

159 Collect. Ex. 32, BH-RA59.

160 Collect. Ex. 32, BH-RA88.

161 Collect. Ex. 32, BH-PR86.

162 Collect. Ex. 32, BH-RA89.

*So get your new computer today - and with your paid order we'll include a free flat panel tv, a free color printer, and a one year warranty - absolutely free.*¹⁶³

*Don't wait another minute, call BlueHippo today and get your brand new computer - and a FREE color printer, 1-year warranty, plus a FREE LCD flat screen TV!*¹⁶⁴

*Call 1-800-600-0998 and your brand new, name brand state-of-the-art PC will be on its way to your house . . . guaranteed.*¹⁶⁵

*You can be approved in minutes no matter what your credit and with your paid order we'll even throw in a free 1 year warranty, a free color printer and a free LCD flat screen tv . . . Before you know it, your brand new laptop will be waiting for you at your doorstep.*¹⁶⁶

*Call today for your brand-new computer and before you know it a new PC will be delivered right to your door.*¹⁶⁷

*So grab your checkbook and call BlueHippo today and your brand-new, brand-name computer will be on its way to your house.*¹⁶⁸

*Call today for your family's brand new computer - and a new PC will be delivered right to your door.*¹⁶⁹

*Call BlueHippo today and before you know it, a state-of-the-art PC will be delivered right to your door.*¹⁷⁰

*Call BlueHippo today and before you know it, a brand-new PC will be delivered right to your door.*¹⁷¹

163 Collect. Ex. 32, BH-RA82; Collect. Ex. 32, BH-RA74; Collect. Ex. 32, BH-RA75; Collect. Ex. 32, BH-RA79.

164 Collect. Ex. 32, BH-RA80.

165 Collect. Ex. 32, BH-RA1; See also Collect. Ex. 32, BH-RA3; Collect. Ex. 32, BH-RA5; Collect. Ex. 32, BH-RA6; Collect. Ex. 32, BH-RA7; Collect. Ex. 32, BH-RA8; Collect. Ex. 32, BH-RA9 (same language with 1-800-XXX-XXXX in place of 1-800-600-0998).

166 Collect. Ex. 32, BH-RA86.

167 Collect. Ex. 32, BH-RA42; BH-RA46; BH-RA59; BH-RA82 (at 33 seconds); BH-RA82.

168 Collect. Ex. 32, BH-PR4.

169 Collect. Ex. 32, BH-RA48.

170 Collect. Ex. 32, BH-RA28; Collect. Ex. 32, BH-RA30; Collect. Ex. 32, BH-RA32; Collect. Ex. 32, BH-RA38.

171 Collect. Ex. 32, BH-RA54.

*Call today and get a brand new LCD TV and color printer.*¹⁷²

*Before you know it, your brand name new laptop will be waiting for you at your doorstep.*¹⁷³

*Soon you'll be cruisin' the Internet in style with your brand new computer.*¹⁷⁴

*Get a brand new, brand name computer. Call BlueHippo now. Order today and get a LCD tv and color printer - FREE. Hurry, call today.*¹⁷⁵

*Call now to get the computer you need regardless of your credit, plus two free gifts with order.*¹⁷⁶

*How long does it take to receive my computer?
After you have made your pre-paid installments, establishing your credit with us, we immediately process your order and ship your computer. Your brand new computer should arrive within 10 days, fully installed with Microsoft and Internet software.*¹⁷⁷

*Call 1-800-591-4708 to get your new PC. Instant application.*¹⁷⁸

252. Aside from these representations, the Defendants have used advertisements with explicit references to specific times and seasons.

253. As an example, the Defendants ran advertisements for computers in July and August with the message "Perfect for Back to School,"¹⁷⁹ including BH-PR100, shown below:

172 Collect. Ex. 32, BH-TV6.

173 Collect. Ex. 32, BH-RA86; Collect. Ex. 32, BH-RA96.

174 Collect. Ex. 32, BH-RA11.

175 Collect. Ex. 32, BH-TV6.

176 Collect. Ex. 32, BH-TV7.

177 Collective Ex. 69, <http://web.archive.org/web/20030629192758/bluehippo.com/Help.aspx> (last visited June 17, 2008).

178 Collect. Ex. 32, BH-PR45.

179 Collect. Ex. 32, BH-PR40; Collect. Ex. 32, BH-PR41; Collect. Ex. 32, BH-PR43; Collect. Ex. 32, BH-PR75; Collect. Ex. 32, BH-PR76; Collect. Ex. 32, BH-PR77; Collect. Ex. 32, BH-PR78; Collect. Ex. 32, BH-PR82; Collect. Ex. 32, BH-PR100; Collect. Ex. 32, BH-PR108; Collect. Ex. 32, BH-PR109; Collect. Ex. 32, BH-110; Collect. Ex. 32, BH-PR111; and Collect. Ex. 32, BH-PR112.

GUARANTEED APPROVAL

For A Brand New Computer No Matter What Your Credit Looks Like

BlueHippo finances thousands of computers to people with past credit problems. So it doesn't matter if you have bad credit, past bankruptcies or unpaid bills because BlueHippo doesn't even check your credit. Call now at **1-800-533-0971**.

FREE

FREE

GET A FREE TV CALL NOW

We will also send you an ultra thin LCD TV plus a color printer **FREE** with paid purchase.

Call **BlueHippo®** TODAY!

1-800-533-0971

PERFECT FOR BACK TO SCHOOL

254. Another advertisement,¹⁸⁰ labeled “Holiday Ad” by the ad’s producers, featured the Defendants’ mascot in a scarf and mittens along with images of snowflakes, implied that the Defendants’ computers would be received before the holidays.¹⁸¹ The advertisement, BH-PR84, is shown below:

¹⁸⁰ Collect. Ex. 32, BH-PR84.

¹⁸¹ See also, Ex. 61, Aff. of Jeremy Kirby, at para. 6 (“I wanted to get a computer because I wanted to buy one as a Christmas gift for my nephew, who lives with me. Based on the advertisement and the initial call, I was under the impression that I would receive my computer before Christmas.”); Ex. 11, Aff. of Cynthia Brunat, at para. 6, 9 (“I wanted to get a computer for my grandson who was starting college. I wanted to give this to him as a gift for Christmas. I never received the computer.”) (When I made arrangements for this payment, BlueHippo told me that my computer would ship in five to ten (5 to 10) business days. This was important to me because I wanted to be sure that I got it in time for Christmas so that I could ship it to my grandson in Orlando. A week later they continued taking payments and I never received the computer.”); Ex. 27, Aff. of Allen Hubbard, at para. 6 (“I wanted to get a computer for my family as a Christmas present. The computer did not arrive in time for Christmas, I have still not received a computer or a refund.”)

'TIS THE SEASON FOR NO CREDIT CHECK

You Are Guaranteed Approval For A Brand New Computer

Everything You Need Sent to Your Door!

We'll send a brand new PC, fully-loaded with everything you need:

- ★ Microsoft® Windows Vista®
- ★ 17" flat panel monitor
- ★ DVD drive/CD burner
- ★ A 1-year warranty
- ★ **Free*** Color Printer
- ★ **Free*** LCD Flat Screen TV

Bad Credit? No Credit? No Problem!

Hard to believe? Believe it! When you finance your new computer from BlueHippo®, we won't check your credit - we don't care what it is. All you need is an active checking account and a phone.

That's right - with BlueHippo® there is no credit check so you will be approved - **GUARANTEED**. Thousands of families are enjoying new computers because they called BlueHippo®! We'll help you too!

Call Now 1-800-731-9584

*With paid purchase.

255. The "Perfect for Back to School" and "Holiday Ad" advertisements imply that the consumer will receive a computer within the seasonal time frame referenced by the advertisement, when this is not true.

256. In its shipping verification form under the pre-March 2006 model, the Defendants stated in large font "Get Your Computer Fast" "Send Back all of the items listed on the Fax Cover Checklist TODAY to get your brand new computer FAST."¹⁸²

257. The Defendants sales scripts mislead consumers as to the date that the consumer

¹⁸² Ex. 42, Pre-March 2006 Shipping Verification Form.

stands to receive their computer or other product under the Defendants' default "layaway" plan because the Defendants only reference shipping dates for products under their financing agreement, which is much earlier than under the "layaway" agreement.¹⁸³

Misleading Statements as to Shipping Date in Pre-March 2006 Sales Scripts

258. Prior to March 2006, the Defendants' sales script only listed the date the consumer stood to receive the computer or other product under the financing agreement.

259. Prior to March 2006, the Defendants, while requiring the consumer to sign the financing agreement, stated the following in their "Revolving Account Agreement" in relevant part:

STANDARD SHIPPING PROGRAM: You will automatically be enrolled in the Standard Shipping Program if you are not eligible for the Accelerated Shipping Program, and you will be required to pay 66% of the merchandise Subtotal as shown on your Shipping Verification Form prior to our auditors approving your order for shipping.¹⁸⁴

260. Using the Shipping Verification Form example provided for pre-March 2006, the consumer would have to make twenty-nine (29) weeks worth of payments before the auditors would approve the order for shipping.¹⁸⁵

261. Prior to March 2006, instead of listing the date for shipping under "standard shipping," referencing that the order will be approved for shipment after 66% of the payments are made for standard shipping, or listing the number of approximate weeks after which the consumer

183 Ex. 61, Aff. of Jeremy Kirby, at para. 12, 14 ("It was my understanding that I would receive the computer after 13 weeks of consecutive payments, which I completed." "After I had made 13 weeks of consecutive payments, my computer had still not arrived. I called BlueHippo to ask them about my order several times and one time, an employee told me that my computer would arrive in 6-8 more weeks. I then canceled my order by telling BlueHippo to stop withdrawing money from my account.")

184 Ex. 43, Pre-March 2006 Revolving Account Agreement.

185 Ex. 42, Pre-March 2006 Shipping Verification Form (66% of Subtotal of \$1,789.11 less \$124 activation payment divided by \$35.99 weekly payment equals 29.362 weeks).

would stand to have their order approved for standard shipping, BlueHippo stated the following, in relevant part:

This is pretty easy, all you have to do **is make a small down payment and then pay just 13 weeks of payments before you are approved for shipment.** *Once approved, you will get your new PC in just 4-6 weeks. Then we finance your balance, order your computer, and have it shipped directly to your home.*¹⁸⁶

262. BlueHippo only made the following limited and ambiguous disclosure for the first time during the *recorded* portion of the pre-March 2006 sales script.

Now [first name] you understand to get your purchase before you pay in full you will need to show our auditors that you are credit worthy by paying 13 weeks worth of consecutive payments as agreed and sending your paperwork back.¹⁸⁷

Misleading Statements as to Shipping Dates in March 2006 to Late 2006 "Layaway" Sales Scripts

263. In the March 2006 to late 2006 "layaway" sales script, the Defendants state the following, in relevant part:

This is pretty easy, all you have to do is make a small activation payment and then pay just 6 short weeks of layaway payments. *Then we finance your balance, order your computer, and have it shipped directly to your home. Once you get you computer, you just continue making payments until you are fully paid off.*¹⁸⁸

and

After you've paid your activation payment and a minimum of 6 consecutive weeks worth of payments our auditors will offer to finance your balance. When you sign and send the offer back, the auditors *will approve your computer for shipment - of course, you can always continue on the layaway plan if you prefer.*¹⁸⁹

264. The Defendants only make the following limited and ambiguous statement in the

¹⁸⁶ Ex. 44, Pre-March 2006 Sales Script, at 4 (Bold emphasis in original, italicized emphasis added).

¹⁸⁷ Ex. 44, Pre-March 2006 Sales Script, at 25.

¹⁸⁸ Ex. 54, March 2006 to Late 2006 Layaway Sales Script, at 4 (Emphasis added).

¹⁸⁹ Ex. 54, March 2006 to Late 2006 Layaway Sales Script, at 29 (Emphasis added).

recorded portion of the March 2006 to late 2006 sales script:

Now [first name] you understand to get your purchase out of layaway before you pay in full you will need to show our auditors that you are credit worthy by paying as agreed and sending your layaway paperwork back.¹⁹⁰

Misleading Statements as to Shipping Dates in Current Sales Scripts

265. The sales script in the current business model also misleads consumers as to the date that their computer or product will be shipped.¹⁹¹

266. The Defendants' state in the current sales script the following, in relevant part:

Now because we don't check your credit, all we ask is that you build a short credit history with us by **making a small down payment - which doesn't have to be paid today - and then pay just 9 short weeks worth of layaway payments.** Then we finance, order and ship your computer directly to your home.¹⁹²

and

After you've paid your initial payment and a minimum of 9 consecutive weeks worth of payments, we will offer to finance your balance. You will receive a sales order form and a financing agreement as part of your Welcome Package. *Once you've made these payments and you've signed and sent back the documents, please allow another 3-4 weeks for shipping and handling - of course you can always continue on the layaway plan if you prefer.*¹⁹³

267. The Defendants only give the following ambiguously worded disclosure in the recorded portion of the sales script call:

Now [first] you understand to get your purchase out of layaway before you pay in full you will need to show that you are credit

190 Ex. 44, Pre-March 2006 Sales Script, at 4 (Bold emphasis in original, italicized emphasis added).

191 Ex. 8, Aff. of Jessica King, Attachment A (statement reads, "After I've paid my initial payment and a minimum of 13 consecutive weeks worth of payments, BlueHippo will offer to finance my balance. Once I've made these payments and I've signed and sent back the Retail Installment Contract, BlueHippo can process my computer for shipment – of course I can always continue on the layaway plan if I prefer.")

192 Ex. 55, Current Sales Script, at 4 (Bold emphasis in original, italicized emphasis added).

193 Ex. 55, Current Sales Script, at 27 (Emphasis added).

worthy by paying as agreed.¹⁹⁴

268. Aside from the text of sales scripts, the Defendants have actively misrepresented the time frame consumers would receive their products in unscripted conversations that the Defendants have recorded.

269. As an example, the Defendants' representative or agent engaged in the following dialogue with Tennessean R. Blackwell outside of the place on the sales script that the Defendants' representative or agent is supposed to record the conversation.

BHC:	Tell them you want accelerated shipping.
CONSUMER:	How long does this usually take, do you know?
BHC:	I . . well, all we do is take orders. I don't work with that department, so I don't know. But I know you will know the date because they do use UPS.
CONSUMER:	<i>Is that months or . . .?</i>
BHC:	<i>Oh G-d No.</i>
CONSUMER:	I mean . . .
BHC:	You know . . .
CONSUMER:	Yeah.
BHC:	<i>No. No. [laughter]</i>
CONSUMER:	I heard you say something about months and I . . .
BHC:	<i>Oh gracious no.</i>
CONSUMER:	I was hoping it's going to be a week or so.
BHC:	<i>Because you want to get it right away.</i>
CONSUMER:	Yeah. ¹⁹⁵

¹⁹⁴ Ex. 55, Current Sales Script, at 26.

As another example, the following exchange occurred between the Defendants' sales representative and Tennessee consumer J. Robertson:

BHC: Congratulations James and thank you for choosing BlueHippo. You have a great evening okay?

CONSUMER: You too. I have one other. . . .Can I ask you a question real quick?

BHC: Sure. No problem.

CONSUMER: Okay . . . now after I send this stuff back to you with a voided check . . . now that will automatically start coming out and I'll get my - how soon after that will I get my computer?

BHC: You'll get . . . you'll get your computer . . . I don't have your actual shipping date. You can call customer service. *It's probably going to be about maybe 2 payments . . . 2 or 3 payments then it'll get shipped*, but I don't have your actual ship date information. I'm going to give you the customer service number. That's 1-800 . . .

CONSUMER: Hold on . . . hold on . . . hold on. . . Okay.

BHC: It's 1-800 778-4018 and I also have another line which is at 1-800 383 6557. So they'll have all your shipping date information, all your payment information and everything and it should also be placed on your paperwork also. . . okay . . .when they send that in a week.¹⁹⁶

270. Still another Tennessean, E. Watson, had the following colloquy with the Defendants' representative without disclosing that the earlier date potentially only applied if the consumer selected the financing agreement:

CONSUMER: Okay, so actually the computer won't be shipped for 26 weeks, right?

BHC: No . . . no, no. . . no. No. You'll be making payments for 26

195 Ex. 36. Verification Tape of Ronald Blackwell (Emphasis added).

196 Ex. 22, Aff. of James Robertson, Attach A, at 3:12.

weeks that's when you'll own it - that's when you'll finish paying. . .

CONSUMER: Yeah.

BHC: for the computer.

CONSUMER: But you'll get the computer . . . you'll get the computer in 6 payments. 6 payments of \$39.99. Okay, that's going to be \$239. You can do that in 6 weeks, 6 days, or 1 day - doesn't matter.

CONSUMER: Okay. Uh-huh.

BHC: Now listen to me. He's going to be making bi-weekly payments. So he'll make 3 payments and get his computer.

CONSUMER: Okay. . . okay.

BHC: Now listen to me again. He may not want to wait that long. The point I'm making is this - whenever you make those 6 payments whether you have good credit, bad credit, or whether you make it in 6 weeks, 6 days, or 1 day whenever you make that, uh, 6 payments then your computer will be shipped to you right away.

CONSUMER: Gotcha. I got you.

BHC: Now he may not want to wait. If he does not want to wait and he [wants to] go ahead and make the \$239 down, uh, uh, 6 week payments or all at once or something like that - just dial the customer service number that I gave you.¹⁹⁷

MISREPRESENTING THE SOURCE OF AND CONTROL OVER PRODUCTS

271. The Defendants' advertisements and other promotional materials have misrepresented or caused confusion as to the source of the goods offered.

272. The Defendants have repeatedly referred to their default option as a "layaway" plan despite the fact that the Defendants do not set aside the computers and other products they offer

¹⁹⁷ Ex. 37, Verification Tape of Eva Watson at 6:51; See also, Ex. 34, Verification Tape of Donald Smith at :16 (BHC representative states computer will be shipped immediately after three payments).

consumers or cause others to set aside a specific computer or other product at the time the order is made.¹⁹⁸

273. The Defendants' advertisements do not clearly and conspicuously disclose the material terms of the Defendants' "layaway" plan, most notably that the computers are not set aside, possessed, or shipped by the Defendants and that the Defendants retain the ability to ship different merchandise than the merchandise actually ordered.

274. In fact, the Defendants advertisements convey the opposite message, namely that the Defendants set aside, possess, and ship the consumers' order.

275. As examples, the Defendants advertisements state the following:

*A brand new computer is waiting for you.*¹⁹⁹

*BlueHippo will deliver a new, internet-ready PC to your door.*²⁰⁰

*We'll send a brand new PC, fully loaded with everything you need . . .*²⁰¹

*We'll send you a new state-of-the-art computer . . .*²⁰²

*We'll send a brand new state-of-the-art PC . . .*²⁰³

*We will also send you an ultra-thin LCD TV plus a color printer FREE with paid purchase.*²⁰⁴

198 See Ex. 70, Ltr. From Clay Friedman.

199 Collect. Ex. 32, BH-PR17; Collect. Ex. 32, BH-PR21; Collect. Ex. 32, BH-PR34; Collect. Ex. 32, BH-PR35; and Collect. Ex. 32, BH-PR43 (Emphasis added).

200 Collect. Ex. 32, BH-RA67 (Emphasis added).

201 Collect. Ex. 32, BH-PR101; Collect. Ex. 32, BH-PR52; Collect. Ex. 32, BH-PR61; Collect. Ex. 32, BH-PR65; Collect. Ex. 32, BH-PR66; Collect. Ex. 32, BH-PR69; Collect. Ex. 32, BH-PR71; and Collect. Ex. 32, BH-PR72 (Emphasis added).

202 Collect. Ex. 32, BH-PR10 (Emphasis added).

203 Collect. Ex. 32, BH-PR19 (Emphasis added).

204 Collect. Ex. 32, BH-PR101; Collect. Ex. 32, BH-PR52; Collect. Ex. 32, BH-PR60; Collect. Ex. 32, BH-PR61; Collect. Ex. 32, BH-PR62; Collect. Ex. 32, BH-PR63; Collect. Ex. 32, BH-PR64; Collect. Ex. 32, BH-PR65; Collect. Ex. 32, BH-PR66; Collect. Ex. 32, BH-PR67; Collect. Ex. 32, BH-PR78; Collect. Ex. 32, BH-PR81; Collect. Ex. 32, BH-PR82; See also, Collect. Ex. 32, BH-PR68; Collect. Ex. 32, BH-PR69; Collect. Ex. 32, BH-PR70; Collect. Ex. 32, BH-PR71; Collect. Ex. 32, BH-PR72; Collect. Ex. 32, BH-PR73; Collect. Ex. 32, BH-PR75; Collect.

*We have thousands of high speed laptops that we're sending to people like you without a credit check.*²⁰⁵

We'll send you a laptop no matter what your credit looks like
²⁰⁶
 . . .

*If you order now, we'll send you a free color printer and a free flat screen TV.*²⁰⁷

276. In the cover letter to the March 2006 to late 2006 layaway credit offer, the Defendants state: "*We can't complete the purchasing, production, testing and shipping phase of your layaway purchase until we receive these forms.*"²⁰⁸

277. The Defendants current sales script even states, in relevant part, "*Then we finance, order and ship your computer directly to your home.*"²⁰⁹

278. The Defendants do not and have never shipped the computers they purchase from third parties.

279. The Defendants do not and have never tested the computers and other products they purchase from third parties.

280. The Defendants do not and have never manufactured or otherwise produced computers or other products.

281. The Defendants do not and have never set aside, reserved or called for others to reserve or set aside a product at the time an order for a product is placed

Ex. 32, BH-PR76; Collect. Ex. 32, BH-PR77; Collect. Ex. 32, BH-PR52; Collect. Ex. 32, BH-PR54; Collect. Ex. 32, BH-PR55; Collect. Ex. 32, BH-PR56; Collect. Ex. 32, BH-PR57; Collect. Ex. 32, BH-PR59; Collect. Ex. 32, BH-PR60; Collect. Ex. 32, BH-PR61; Collect. Ex. 32, BH-PR62; Collect. Ex. 32, BH-PR63; Collect. Ex. 32, BH-PR64; and Collect. Ex. 32, BH-PR65. (Emphasis added).

205 Collect. Ex. 32, BH-RA86; Collect. Ex. 32, BH-RA72 (Emphasis added).

206 Collect. Ex. 32, BH-RA87; Collect. Ex. 32, BH-RA88 (Emphasis added).

207 Collect. Ex. 32, BH-TV9 (Emphasis added).

208 Ex. 48, March 2006 to Late 2006 Layaway Credit Offer (Emphasis added).

209 Ex. 55, Current Sales Script, at 4 (Emphasis added).

ACTIVELY MISREPRESENTING “NO CREDIT CHECKS”

282. The Defendants have repeatedly stated that they perform “no credit checks” without qualification yet have consistently placed provisions within their contracts purporting to authorize the Defendants unfettered access to consumers’ credit records.

283. The Defendants have made the following representations to consumers:

*Now because we don’t check your credit, all we ask is that you build a short credit history with us.*²¹⁰

*Now, because we don’t check your credit, all we ask is that you build a short credit history with us by making a small down payment --which doesn’t have to be paid today - and then pay just 9 short weeks of layaway payments.*²¹¹

*There is: No credit check.*²¹²

*There’s no credit check . . .*²¹³

*They didn’t even check my credit!*²¹⁴

You heard right - there’s no credit check which means you’re approved for a brand new name brand desktop or laptop computer you’ve always wanted.²¹⁵

*We won’t even check your credit score.*²¹⁶

*In fact, we won’t even check your credit score.*²¹⁷

Suppose you could get a brand new laptop *without ever having your credit checked . . .* We’re BlueHippo and we have thousands of high

210 Ex. 44, Pre-March 2006 Sales Script, at 5; Ex. 54, March 2006 to Late 2006 Layaway Sales Script, at 4 (Emphasis added).

211 Ex. 55, Current Sales Script, at 4 (Emphasis added).

212 Ex. 54, March 2006 to Late 2006 Layaway Sales Script, at 34 (Emphasis added).

213 Collect. Ex. 32, BH-RA87 (Emphasis added).

214 Collect. Ex. 32, BH-RA64 (Emphasis added).

215 Collect. Ex. 32, BH-RA65; Collect. Ex. 32, BH-RA71 (Emphasis added).

216 Collect. Ex. 32, BH-RA81 (Emphasis added).

217 Collect. Ex. 32, BH-RA82; BH-RA88 (Emphasis added).

speed wireless laptops that we're sending to people like you *without a credit check*.²¹⁸

Sin Verificación de Crédito.²¹⁹

And remember, there is no credit check and your approval is guaranteed.²²⁰

*That's right - with BlueHippo® there is no credit check so you will be approved - GUARANTEED!*²²¹

So it doesn't matter if you have bad credit, past bankruptcies, or unpaid bills *because BlueHippo doesn't check your credit*.²²²

No credit check.²²³

Get a new computer (without a credit check).²²⁴

Get a new computer (no credit check).²²⁵

We don't care about your credit rating! Hard to believe? Believe it! When you finance your new computer from BlueHippo®, we won't check your credit - we don't care what it is.²²⁶

284. BH-PR85, shown below and the following advertisements explicitly represent that no credit checks will be performed:

BH-PR2, BH-PR3, BH-PR4, BH-PR5, BH-PR6, BH-PR7, BH-PR8, BH-PR9, BH-PR10, BH-PR11, BH-PR17, BH-PR18, BH-PR19, BH-PR20, BH-PR21, BH-PR22, BH-PR23, BH-PR24, BH-PR25, BH-PR26, BH-PR27, BH-PR28, BH-PR29, BH-PR30, BH-PR31, BH-PR32, BH-PR34, BH-PR35, BH-PR36, BH-PR37, BH-PR38, BH-PR39, BH-PR40, BH-PR41, BH-PR42, BH-PR43, BH-PR44,

218 Collect. Ex. 32, BH-RA86 (Emphasis added).

219 Collect. Ex. 32, BH-TV5 (Emphasis added).

220 Collect. Ex. 32, BH-TV9 (Emphasis added).

221 Collect. Ex. 32, BH-PR101; Collect. Ex. 32, BH-PR52; Collect. Ex. 32, BH-PR61; Collect. Ex. 32, BH-PR65; Collect. Ex. 32, BH-PR67; Collect. Ex. 32, BH-PR71; Collect. Ex. 32, BH-PR72 (Emphasis added).

222 Collect. Ex. 32, BH-PR60; Collect. Ex. 32, BH-PR61; Collect. Ex. 32, BH-PR66; Collect. Ex. 32, BH-PR70; Collect. Ex. 32, BH-PR71; Collect. Ex. 32, BH-PR75; Collect. Ex. 32, BH-PR76; Collect. Ex. 32, BH-PR77; Collect. Ex. 32, BH-PR78; Collect. Ex. 32, BH-PR81 (Emphasis added).

223 Collect. Ex. 32, BH-CL16; Collect. Ex. 32, BH-PR62 (Emphasis added).

224 Collect. Ex. 32, BH-PR63; Collect. Ex. 32, BH-PR64; Collect. Ex. 32, BH-PR68 (Emphasis added).

225 Collect. Ex. 32, BH-PR69 (Emphasis added).

226 Collect. Ex. 32, BH-PR65; Collect. Ex. 32, BH-PR72 (Emphasis added).

BH-PR45, BH-PR46, BH-PR47, BH-PR49, BH-PR50, BH-PR51, BH-PR52, BH-PR53, BH-PR54, BH-PR55, BH-PR56, BH-PR57, BH-PR59, BH-PR60, BH-PR61, BH-PR62, BH-PR63, BH-PR64, BH-PR65, BH-PR66, BH-PR67, BH-PR68, BH-PR69, BH-PR70, BH-PR71, BH-PR72, BH-PR73, BH-PR74, BH-PR75, BH-PR76, BH-PR77, BH-PR78, BH-PR81, BH-PR82, BH-PR83, BH-PR84, BH-PR86, BH-PR87, BH-PR88, BH-PR89, BH-PR90, BH-PR92, BH-PR96, BH-PR97, BH-PR98, BH-PR99, BH-PR100, BH-PR101, BH-PR102, BH-PR103, BH-PR104, BH-PR105, BH-PR106, BH-PR107, BH-PR108, BH-PR109, BH-PR110, BH-PR111, BH-PR112, BH-PR113, BH-RA1, BH-RA3, BH-RA4, BH-RA5, BH-RA10, BH-RA11, BH-RA26, BH-RA27, BH-RA28, BH-RA29, BH-RA30, BH-RA32, BH-RA33, BH-RA34, BH-RA35, BH-RA36, BH-RA37, BH-RA38, BH-RA39, BH-RA40, BH-RA41, BH-RA42, BH-RA43, BH-RA45, BH-RA46, BH-RA48, BH-RA49, BH-RA50, BH-RA51, BH-RA52, BH-RA53, BH-RA54, BH-RA55, BH-RA59, BH-RA64, BH-RA65, BH-RA66, BH-RA67, BH-RA68, BH-RA69, BH-RA71, BH-RA72, BH-RA73, BH-RA74, BH-RA75, BH-RA76, BH-RA77, BH-RA78, BH-RA79, BH-RA81, BH-RA82, BH-RA83, BH-RA85, BH-RA86, BH-RA87, BH-RA88, BH-RA89, BH-RA90, BH-RA91, BH-RA92, BH-RA93, BH-RA95, BH-RA96, BH-RA97, BH-RA104, BH-CL2, BH-CL4, BH-CL5, BH-CL7, BH-CL8, BH-CL11, BH-CL12, BH-CL13, BH-CL14, BH-CL16, BH-CL17, BH-PC1, BH-PC2, BH-PC3, BH-TV1, BH-TV3, BH-TV9, and BH-TV10.



Need a new Computer?

GUARANTEED APPROVAL

Bad Credit? No Credit? No Problem!

Active checking account & phone number required.

The advertisement features a blue background with white and red text. A large red circle with a diagonal slash through it is superimposed over the words 'CREDIT CHECK', which are written in a bold, sans-serif font. The entire graphic is framed by a white border.



Hard to believe? **Believe it!** When you finance your new computer from BlueHippo®, we won't check your credit - we don't care what it is. All you need is an active checking account and a phone number.

That's right – with BlueHippo® there is no credit check so you will be approved – **GUARANTEED.** Thousands of families are enjoying new computers because they called BlueHippo®! We'll help you too!

CALL NOW 1-800-773-0687

285. Prior to March 2006, the Defendants stated in their “Revolving Account Agreement:” the following, in relevant part, “**ADDITIONAL RIGHTS OF OURS.** . . . We may investigate your credit and report to credit reporting agencies on the payment history of your Account.”²²⁷

286. The same “Revolving Account Agreement” prior to March 2006 contained the following terms:

²²⁷ Ex. 43, Pre-March 2006 Revolving Account Agreement, at 2.

12. ACCURACY OF INFORMATION: . . . You agree that we may obtain employment and income records, a credit bureau report on you, verify your credit references and we may check any of the information provided on this application from whatever source we choose to verify it. . .

25. CREDIT REPORTS: You give us permission to request information from you and to make whatever inquiries we consider necessary and appropriate (including requesting a consumer report from reporting agencies) for the purposes of any updates, renewals or extension of credit or reviewing or collecting your Account. Upon your request to us at 7000 Security Blvd, Baltimore, MD 21244, we will inform you of the name and the address of each consumer reporting agency from which we obtained a report, if any, relating to you. You authorize us to report your performance under this agreement to credit bureaus and others who may properly receive such information. You are hereby notified that a negative credit report reflecting on your credit record could be submitted to credit reporting agencies if you fail to fulfill the terms of this Agreement.

287. The March 2006 to late 2006 "Layaway Agreement Terms and Conditions"

similarly stated, in relevant part, the following:

8. ACCURACY OF INFORMATION: [Y]ou agree that we may obtain employment and income records, a credit bureau report on you, verify your credit references and we may check any of the information provided on this application from whatever source we choose to verify it. Additionally, upon request, you agree to promptly give us accurate updated financial information about yourself.

288. The March 2006 to late 2006 "Revolving Charge Agreement" stated, in relevant part, the following:

12. ACCURACY OF INFORMATION: [Y]ou agree that we may obtain employment and income records, a credit bureau report on you, verify your credit references and we may check any of the information provided on this application from whatever source we choose to verify it.

25. CREDIT REPORTS: You give us permission to request information from you and to make whatever inquiries we consider

necessary and appropriate (including requesting a consumer report from reporting agencies) for purposes of any updates, renewals or extension of credit or reviewing or collecting your Account . . . You authorize us to report your performance under this agreement to credit bureaus and others who may properly receive such information. You are hereby notified that a negative credit report reflecting on your credit record could be submitted to credit reporting agencies if you fail to fulfill the terms of this Agreement.

289. In spite of these representations that the company does not conduct “credit checks,” the Defendants state in their current financing document the following, in relevant part:

ACCURACY OF INFORMATION/CREDIT REPORTS: [Y]ou agree that we may obtain employment and income records, a credit bureau report on you, verify your credit references and we may check any of the information provided on this application from whatever source we choose to verify it. You agree that the Department of Motor Vehicles may release your residence address to us should it become necessary to locate you. . . .

MISREPRESENTING “GUARANTEED APPROVAL”

290. The Defendants have repeatedly misrepresented the scope and nature of their claim that consumers are guaranteed to be approved.

291. The Defendants have stated the following including BH-IN2 shown below:

*Your approval is guaranteed, so you will not be turned down.*²²⁸

*In just one call I have guaranteed approval on my new desktop computer.*²²⁹

Now you can get the computer you've always wanted - guaranteed. All you need is a checking account and a home phone. *BlueHippo says you're approved - guaranteed. . . . All credit is accepted so you will not be turned down. If you have a checking account and a home phone, you're already approved -guaranteed. . . .BlueHippo says you're approved for the computer of your dreams - guaranteed.* Call 1-800-500-6363 and your brand new name brand computer

²²⁸ Collect. Ex. 32, BH-RA64 (Emphasis added).

²²⁹ Collect. Ex. 32, BH-RA64 (Emphasis added).

will be yours - *guaranteed*.²³⁰

Attention: if you have bad credit or less than perfect credit, now you can get the computer you've always wanted - *guaranteed*. *All you need is a checking account and a home phone. BlueHippo says you're approved - guaranteed. You heard right there's no credit check which means you're approved for the name brand desktop or laptop computer you've always wanted - guaranteed. All you need is a checking account and a home phone. . . . All credit is accepted so you will not be turned down. If you have an active checking account you're already approved - guaranteed. . . . BlueHippo says you're approved for the computer of your dreams - guaranteed. Call 1-800-700-4833 and your brand new, name brand computer will be yours - guaranteed. Bad credit? No credit? No problem. You're approved.*²³¹

*All credit is accepted so you will not be turned down . . . Just call BlueHippo today and you'll hear: "Congratulations, you're approved!"*²³²

*All credit is accepted so you will not be turned down.*²³³

*You can be approved in minutes, no matter what your credit.*²³⁴

*We'll send you a laptop no matter what your credit looks like.*²³⁵

*We'll send you a brand-new laptop no matter what your credit history looks like . . . All credit is accepted, so you will not be turned down. Just call BlueHippo today and you'll hear: "Congratulations, you're approved!"*²³⁶

*Aprobación Garantizada!*²³⁷

*Call now to get the computer you need regardless of your credit.*²³⁸

230 Collect. Ex. 32, BH-RA65 (Emphasis added).

231 Collect. Ex. 32, BH-RA71 (Emphasis added).

232 Collect. Ex. 32, BH-RA81 (Emphasis added).

233 Collect. Ex. 32, BH-RA82 (Emphasis added).

234 Collect. Ex. 32, BH-RA86 (Emphasis added).

235 Collect. Ex. 32, BH-RA87 (Emphasis added).

236 Collect. Ex. 32, BH-RA88 (Emphasis added).

237 Collect. Ex. 32, BH-TV5 (Emphasis added).

238 Collect. Ex. 32, BH-TV7 (Emphasis added).

Brand New, Brand Name, Approval Guaranteed [elsewhere the ad states: Checking account required].²³⁹

*Approval guaranteed. Checking account required.*²⁴⁰

*Guaranteed approval! Bad credit OK . . . Checking account required.*²⁴¹

*Guaranteed approval! . . . Bad credit OK. Checking account required.*²⁴²

*You Are Approved! Get Your Brand New Computer Even If You Have Bad Credit or No Credit At All! . . . All you need is an active checking account and a phone. That's right - with BlueHippo® there is no credit check so you will be approved - GUARANTEED!*²⁴³

*GUARANTEED APPROVAL For A Brand New Computer No Matter What Your Credit Looks Like . . . That's right - with BlueHippo there is no credit check so you will be approved - GUARANTEED. All you need is an active checking account and a home phone.*²⁴⁴

*GUARANTEED APPROVAL!*²⁴⁵

*Guaranteed Approval For a Brand New Computer Without a Credit Check . . . That's right - with BlueHippo there is no credit check so you will be approved - GUARANTEED. All you need is an active checking account and a home phone.*²⁴⁶

*BlueHippo® guarantees your approval for a brand new, brand-name desktop or laptop regardless of your credit history. You can pay by the week; all you need is an active checking account and a home phone number.*²⁴⁷

You Are Approved! Get Your Brand New Computer Even If You

239 Collect. Ex. 32, BH-TV9 (Emphasis added).

240 Collect. Ex. 32, BH-CL15 (Emphasis added).

241 Collect. Ex. 32, BH-CL16 (Emphasis added).

242 Collect. Ex. 32, BH-CL17 (Emphasis added).

243 Collect. Ex. 32, BH-PR101 (Emphasis added).

244 Collect. Ex. 32, BH-PR52 (Emphasis added).

245 Collect. Ex. 32, BH-PR60.; Collect. Ex. 32, BH-PR70; Collect. Ex. 32, BH-PR75; Collect. Ex. 32, BH-PR76; Collect. Ex. 32, BH-PR77; Collect. Ex. 32, BH-78; and Collect. Ex. 32, BH-PR81 (Emphasis added).

246 Collect. Ex. 32, BH-PR61 (Emphasis added).

247 Collect. Ex. 32, BH-PR63; BH-PR64 (Emphasis added).

*Have Bad Credit or No Credit At All! . . . That's right - with BlueHippo® there is no credit check so you will be approved - GUARANTEED.*²⁴⁸

*GUARANTEED APPROVAL For A Brand New Computer No Matter What Your Credit Looks Like . . . That's right - with BlueHippo there is no credit check so you will be approved - GUARANTEED. All you need is an active checking account and a phone.*²⁴⁹

*GUARANTEED APPROVAL For A Brand New Computer No Matter What Your Credit Looks Like.*²⁵⁰

*BlueHippo® guarantees your approval for a brand new, brand name desktop or laptop regardless of your credit history. You can pay by the week; All you need is an active checking account and a phone number.*²⁵¹

*BlueHippo guarantees your approval for a new, brand-name computer regardless of your credit history. You can pay by the week, all you need is a checking account and a phone . . . BlueHippo® You're Approved. Guaranteed!*²⁵²

*BlueHippo® guarantees your approval for a brand new, brand-name desktop or laptop regardless of your credit history.*²⁵³



248 Collect. Ex. 32, BH-PR65 (Emphasis added).

249 Collect. Ex. 32, BH-PR66; BH-PR71; and BH-PR72 (Emphasis added).

250 Collect. Ex. 32, BH-PR66 (Emphasis added).

251 Collect. Ex. 32, BH-PR68 (Emphasis added).

252 Collect. Ex. 32, BH-PR69 (Emphasis added).

253 Collect. Ex. 32, BH-PR73; Collect. Ex. 32, BH-PR82 (Emphasis added).



292. In spite of these sweeping representations, the Defendants' representation for guaranteed approval does not disclose key terms and does not clearly and conspicuously disclose that the Defendants' "auditors" have the ability to reject applicants who have made the requisite payments on time and in full.

293. In those instances where the Defendants have qualified the "guaranteed approval" claim it is limited and stated inconsistently.

294. In BH-PR107 and the following Defendants' advertisements, the "guaranteed approval" claim or phrase of similar import, such as "all credit is accepted so you will not be turned down," or "regardless of your credit," is not qualified at all:

BH-PR11, BH-PR12, BH-PR51, BH-PR60, BH-PR62, BH-PR67, BH-PR70, BH-PR75, BH-PR76, BH-PR77, BH-PR78, BH-PR81, BH-PR83, BH-PR96, BH-PR100, BH-PR103, BH-PR104, BH-PR107, BH-PR111, BH-PR112, BH-PR113, BH-RA16, BH-RA19, BH-RA20, BH-RA21, BH-RA22, BH-RA23, BH-RA24, BH-RA25, BH-RA26, BH-RA27, BH-RA28, BH-RA29, BH-RA30, BH-RA37, BH-RA38, BH-RA39, BH-RA40, BH-RA41, BH-RA42, BH-RA43, BH-RA44, BH-RA45, BH-RA46, BH-RA47, BH-RA48, BH-RA49, BH-RA50, BH-RA52, BH-RA54, BH-RA55, BH-RA56, BH-RA57, BH-RA58, BH-RA59, BH-RA60, BH-RA61, BH-RA62, BH-RA64, BH-RA66, BH-RA70, BH-RA74, BH-RA76, BH-RA77, BH-RA78, BH-RA79, BH-RA80, BH-RA81, BH-RA82, BH-RA83, BH-RA85, BH-RA86, BH-RA87, BH-RA88, BH-RA89, BH-RA90, BH-RA91, BH-RA92,

BH-RA93, BH-RA95, BH-RA96, BH-RA97, BH-PC2, BH-PC3, BH-IN1, and BH-IN2.

GUARANTEED APPROVAL!

Credit Check (with a red 'X' over the text)

FREE* (with an arrow pointing to a printer)

FREE* (with an arrow pointing to a monitor)

Call 1-800-731-8341 Today.

BlueHippo® finances thousands of computers to people with past credit problems. So it doesn't matter if you have bad credit, past bankruptcies or unpaid bills because BlueHippo doesn't even check your credit.

GET A FREE TV CALL NOW

We'll send you an ultra thin LCD TV plus a Color Printer **FREE** with your paid purchase*.

ALL FREE ON TV (with an arrow pointing to a TV)

295. In the following Defendants' advertisements, the "guaranteed approval" claim is qualified only by a statement that "a checking or active checking is required:"²⁵⁴

BH-PR1, BH-PR2, BH-PR3, BH-PR5, BH-PR6, BH-PR8, BH-PR10, BH-PR13, BH-PR14, BH-PR15, BH-PR16, BH-PR17, BH-PR18, BH-PR19, BH-PR20, BH-PR21, BH-PR22, BH-PR23, BH-PR24, BH-PR25, BH-PR26, BH-PR27, BH-PR28, BH-PR29, BH-PR30, BH-PR31, BH-PR32, BH-PR33, BH-PR34, BH-PR35, BH-PR36, BH-PR37, BH-PR38, BH-PR39, BH-PR40, BH-PR41, BH-PR42, BH-PR43, BH-PR44, BH-PR45, BH-PR46, BH-PR47, BH-

²⁵⁴ Ex. 26, Aff. of Idell Robertson, at para. 4.

PR49, BH-PR88, BH-PR89, BH-RA67, BH-RA68, BH-RA69, Bh-RA71, BH-RA72, BH-RA73, BH-RA75, BH-CL1, BH-CL2, BH-CL3, BH-CL4, BH-CL5, BH-CL6, BH-CL7, BH-CL8, BH-CL10, BH-CL11, BH-CL12, BH-CL13, BH-CL14, BH-CL15, BH-CL16, and BH-CL17. The disclosure box in BH-TV7, BH-TV8, and BH-TV10 is not legible.

296. In the following Defendants' advertisements, the "guaranteed approval" claim is qualified only by a statement that a checking account and phone are required.²⁵⁵

BH-PR4, BH-PR7, BH-PR9, BH-PR50, BH-PR52, BH-PR53, BH-PR54, BH-PR56, BH-PR57, BH-PR59, BH-PR61, BH-PR63, BH-PR64, BH-PR65, BH-PR66, BH-PR68, BH-PR69, BH-PR71, BH-PR72, BH-PR73, BH-PR74, BH-PR82, BH-PR84, BH-PR85, BH-PR86, BH-PR87, BH-PR90, BH-PR92, BH-PR97, BH-PR98, BH-PR99, BH-PR101, BH-PR102, BH-PR105, BH-PR106, BH-PR108, BH-PR109, BH-RA34, BH-RA35, BH-RA63, BH-RA65, BH-TV3, BH-TV4, BH-TV9, and BH-PC1.

297. In the following Defendants' advertisements, the "guaranteed approval" claim is qualified only by a statement that "a checking or active checking account, phone, and an ability to afford a weekly payment" are required:

BH-RA1, BH-RA2, BH-RA3, BH-RA4, BH-RA5, BH-RA6, BH-RA7, BH-RA8, BH-RA9, BH-RA10, BH-RA11, BH-RA12, BH-RA13, BH-RA14, BH-RA17, BH-RA18, BH-RA32, BH-RA33, BH-RA36, BH-TV1, and BH-TV2.

298. The Defendants' "guaranteed approval" claim is qualified by a statement that a "down payment" is required in BH-RA15.

299. The language contained in the Defendants' contracts and other materials place previously undisclosed terms and conditions on the Defendants sweeping "guaranteed approval" claim.

²⁵⁵ Ex. 24, Aff. of Karen Williams, at para. 5 ("They told me to qualify for their program that all I needed was a phone number and a valid checking account.")

300. In the pre-March 2006 fax cover sheet, the Defendants stated the following:

I am faxing back the following documents:

- 9 This cover page
- 9 My driver's license or state identification card
- 9 A voided check
- 9 My latest pay stub that shows my current employer and wages
- 9 Signed copy of my Shipping Verification Form
- 9 Signed copy of my Revolving Account Agreement

301. Nowhere in the Defendants' pre-March 2006 advertisements or other materials distributed to the consumer is it clearly and conspicuously disclosed that the consumer must be employed, sign the financing agreement, possess a license, or a state identification card.²⁵⁶

302. Under the pre-March 2006 business model, the Defendants' "Revolving Account Agreement Computer Terms & Conditions" stated the following, in relevant part:

ACCELERATED SHIPPING PROGRAM. Provided you have not been in Default at any time prior to the shipment of your merchandise, and your first four weekly or two-biweekly recurring payments as shown on your Shipping Verification Form have been made, *you will be eligible* for our Accelerated Shipping Program and *our auditors can approve* your order for shipping. You understand that establishing a consecutive history of paying as agreed is a strict requirement to participate in this program.

CONFIRMATION. You understand that you must also sign and return this Agreement and any other requested information prior to our auditors approving you for shipment.

303. The March 2006 to late 2006 "Layaway Agreement Terms and Conditions" states in relevant part:

2. MINIMUM PAYMENT DUE: [W]hen you pay as agreed on this layaway purchase, the Auditors may, *at their discretion*, offer to finance your remaining layaway balance and ship your merchandise before your layaway merchandise is paid in full. *If the Auditors offer*, and you choose to accept the terms of the Revolving

²⁵⁶ Ex. 23, Aff. of Carl Lewis, at para. 8 ("The salesperson asked me about my income . . .")

Charge Agreement, and to finance the remaining balance on your Layaway Account . . . If you choose not to accept the terms of the Revolving Charge Agreement, *or if the Auditors do not approve you for financing* your remaining layaway balance using the Revolving Charge Agreement.

9. IDENTITY PROTECTION: All customers may be required to provide to our auditing department the following documentation for *identity, residence and employment verification purposes only*; photocopy of valid state issued driver's license or identification card; photocopy of your federally issued social security card; photocopy of a current utility bill in your name and showing your current address; photocopy of a current pay stub in your name; copy of a current bank statement in your name showing a positive balance.

304. The Defendants' "Revolving Charge Agreement" that was used between March 2006 and late 2006 contained the following terms, in relevant part:

8. CONFIRMATION: You understand that you must also sign and return this Agreement and any other requested information prior to our auditors approving you for financing.

13. IDENTITY PROTECTION: All customers may be required to provide to our auditing department the following documentation for identity, residence and employment verification purposes only: photocopy of valid state issued drivers license or identification card; photocopy of your federally issued social security card; photocopy of a current utility bill in your name and showing your current address; photocopy of a current pay stub in your name; copy of a current bank statement in your name showing a positive balance.

305. Nowhere is it clearly and conspicuously disclosed in any March 2006 to late 2006 advertisement or other material distributed to consumers that the consumer is required to be employed in order to be approved.

306. The current sales script incorrectly implies that the consumer will be automatically approved for financing if they make a designated number of consecutive

weekly payments.

307. The Defendants' current sales script states, in relevant part, the following:

Now because we don't check your credit, *all we ask is that you build a short credit history with us by making a small down payment* --which doesn't have to be paid today - and then pay just 9 short weeks worth of layaway payments. Then we finance, order and ship your computer directly to your home.²⁵⁷

308. The current script states elsewhere that a checking account and a home phone are required for "enrollment."

309. In the "Additional Terms" page attached to the Defendants' current "Retail Installment Contract," the Defendants state, in relevant part, the following:

You acknowledge that we may have required you to provide to our auditing department the following documentation for identity, residence and employment verification purposes only: photocopy of valid state issued drivers license or identification card; photocopy of your federally issued social security card; photocopy of a current utility bill in your name and showing your current address; photocopy of a current pay stub in your name; copy of a current bank statement in your name showing a positive balance.²⁵⁸

310. The current "Retail Installment Contract" allows the Defendants' auditors unfettered access to consumer credit reports or other information.

311. The current "Retail Installment Contract" states the following, in relevant part:

ACCURACY OF INFORMATION/CREDIT REPORTS:

[Y]ou agree that we may obtain employment and income records, a credit bureau report on you, verify your credit references and we may check any of the information provided on this application from whatever source we choose to verify it.[A]dditionally, upon request, you agree to

²⁵⁷ Ex. 55, Current Sales Script, at 4 (Emphasis added).

²⁵⁸ Ex. 53, Current Retail Installment Contract.

promptly give us accurate updated financial information about yourself.

312. None of the Defendants' advertisements have disclosed, clearly and conspicuously or otherwise, that the consumer must give the Defendants the authority to check the consumer's credit as a condition of approval. In fact, as outlined above, the Defendants have stated exactly the opposite, namely that they perform no credit checks whatsoever.

**USING SWEEPING DEFAULT CLAUSE USE AS PRETEXT TO RAISE
INTEREST RATES TO HIGHEST ALLOWED BY LAW OR 24% APR,
ACCELERATE ALL AMOUNTS OWED, AND/OR COLLECT OTHER SUMS**

313. At various times throughout their history, the Defendants have used a sweeping default provision that allows the Defendants the unilateral ability to charge the highest interest rate allowed by law or 24% for any violation of the purported agreement no matter how trivial or technical.

314. BlueHippo's pre-March 2006 "Revolving Account Agreement" states the following, in relevant part:

DEFAULT. You will be in Default under this Agreement upon . . . (b) your violation of any term of any Agreement between usAfter default or your death, and subject to the limitations of applicable law, we have the right to do any or all of the following: (i) reduce your Credit Limit or terminate your account, in which case the terms of this Agreement will apply until full payment of the amount owing on your Account including Finance Charges to the date of the full payment, is received (ii) required immediate payment of your entire Account balance including Same as Cash balances, all accrued but unpaid Finance Charges, and all Fees and other charges listed in this Agreement, (iii) require immediate payment of liquidated damages, which shall be computed by subtracting any payments previously posted from the merchandise Subtotal amount due on your Shipping Verification Form and multiplying the result by 66%, and

(iv) bring an action to collect all amounts owed. If you are in default you agree that the rate of interest shall be increased to 24% APR or the maximum allowed by law and that rate shall be applicable to any post-judgment interest as well. If you are in default you give us permission to draft your checking or savings accounts in any amount at any time until your account balance is paid in full. If we refer your Account for collection, we may, to the extent permitted by applicable law, charge you or collect from you our collection costs, of 25% of the unpaid amount, including court costs, disbursements and reasonable attorneys' fees of 33% of the unpaid amount.

315. The same "Revolving Account Agreement" contains the following terms:

CONFIRMATION. You understand that you must sign and return this Agreement and any other requested information prior to our auditors approving you for shipment.

CHANGE OF INFORMATION. You agree to promptly notify us of any change in your name, address, or place of employment.

AGREEMENT NOT TO PARTICIPATE IN CLASS ACTIONS. To the extent permitted by law, you agree that you will not bring, join or participate in any class action as to any claim, dispute or controversy you may have against us or our agents, directors, officers and employees

316. By the letter of the Defendants' "Revolving Account Agreement," the Defendants would have the ability to charge the highest interest rate allowed by law or 24% APR or accelerate all amounts owed if the consumer failed to sign and return "any other requested information," failed to supply the Defendants with a change of name, address, or employer, or brought, joined, or participated in a class action against the Defendants or their agents.²⁵⁹

²⁵⁹ See, Ex. 60, Aff. of Sarah Reid, at paras. 10-13 (Consumer notified BlueHippo that she would have to be late on one payment because her payday changed at work. BlueHippo representative told consumer that this was not a problem. After consumer made payment via check as requested, BlueHippo turned consumer over to a collection agency and did not resume automatic payments even though balance was under \$200. The

317. Under the “Layaway Agreement Terms and Conditions” document used between March 2006 and late 2006, the Defendants state the following, in relevant part:

3. **DEFAULT:** Subject to the limitations of applicable law, you will be in default under this Agreement upon . . . (b) your violation of any other provision of this Agreement After default and subject to the limitations of applicable law, we have the right to (i) terminate your Account, in which case the terms of this Agreement will apply until full payment of the amount owing on your Account is received, (ii) require you to immediately pay your entire Account balance, including all Fees and other charges listed in this Agreement, as well as reasonable attorneys’ fees and court costs, and (iii) bring an action to collect all amounts owed. If you are in default you give us permission to draft your checking or savings account in any amount at any time until your account balance is paid in full. . . . Therefore, upon occurrence of your default you will be liable to us for the exact amount of your total payments to us prior to default as liquidated damages, and not as a penalty. Additionally, if your Account is in default, any special promotions, discounts, or rebates initially offered to you can be revoked and the shipping of your computer will be delayed no less than six (6) weeks for each defaulted payment.

318. Elsewhere, the “Layaway Agreement Terms and Conditions” document used between March 2006 and late 2006, the Defendants state the following in relevant part:

4. **CHANGE OF ADDRESS:** You agree to notify us if you change your address. . . .

8. **ACCURACY OF INFORMATION:** [A]dditionally, upon request, you agree to give us accurate updated financial information about yourself.

9. **IDENTITY PROTECTION:** All customers may be required to provide to our auditing department the following documentation for identity, residence and employment verification purposes only: photocopy of valid state issued

collection agency has told the consumer that she owes over \$3,000.)

drivers license or identification card, photocopy of your federally issued social security card; photocopy of a current utility bill in your name and showing your current address; photocopy of a current pay stub in your name; copy of a current bank statement in your name showing a positive balance.

20. AGREEMENT NOT TO BRING OR PARTICIPATE IN CLASS ACTIONS: To the extent permitted by law, you agree that you will not bring, join or participate in any class action as to any claim, dispute or controversy you may have against us or our agents, servicers, directors, officers and employees. . . .

319. By the letter of the Defendants' "Layaway Agreement Terms and Conditions," the Defendants have the purported ability to seek any remedy under their default provision, including immediate payment of the entire account balance as purported liquidated damages, if a consumer fails to notify the Defendants of their change in address, fails to give updated financial information requested by the Defendants, fails to provide a driver license, identification card, current utility bill, current pay stub, or current bank statement, or attempts to join or participate in any class action.

320. Under the terms of the Defendants' "Revolving Charge Agreement" used from March 2006 until late 2006, the Defendants state the following, in relevant part:

9. DEFAULT: Subject to the limitations of applicable law, you will be in default under this Agreement upon . . . (b) your violation of any other provision of this Agreement. . . . After default, and subject to the limitations of applicable law, we have the right to (i) reduce your credit limit or terminate your Account, in which case the terms of this Agreement will apply until full payment of the amount owing on your Account is received, (ii) require you to immediately pay your entire Account balance, including all Fees and other charges listed in this Agreement, as well as reasonable attorneys' fees and court costs, and (iii) bring an action to collect all amounts owed. If you are in default you agree that the rate of interest shall be increased to 24\$ APR or the maximum

allowed by law and that rate shall be applicable to any post-judgment interest as well. If we refer your Account for collection, we may, to the extent permitted by applicable law, charge you or collect from you our collections costs of 25% of the unpaid amount, including court costs, disbursements and attorneys' fees of 33% of the unpaid amount. If you are in default you give us permission to draft your checking or savings account in any amount at any time until your account balance is paid in full. . . . [U]pon occurrence of your default you will be liable to us for the exact amount of your total payments to us prior to default as liquidated damages, and not as a penalty.

321. Elsewhere, the Defendants state in their "Revolving Charge Agreement" the following, in relevant part:

8. CONFIRMATION: You understand that you must also sign and return this Agreement and any other requested information prior to our auditors approving you for financing.

12. ACCURACY OF INFORMATION: [A]dditionally, upon request, you agree to promptly give us accurate updated financial information about yourself.

13. IDENTITY PROTECTION: All customers may be required to provide to our auditing department the following documentation for identity, residence and employment verification purposes only: photocopy of valid state issued drivers license or identification card; photocopy of your federally issued social security card; photocopy of a current utility bill in your name and showing your current address; photocopy of a current pay stub in your name; copy of a current bank statement in your name showing a positive balance.

14. CHANGE OF ADDRESS: You agree to notify us if you change your address. . . .

27. AGREEMENT NOT TO BRING OR PARTICIPATE IN CLASS ACTIONS: To the extent permitted by law, you agree that you will not bring, join or participate in any class action as to any claim, dispute or controversy you may have against us or our agents, servicers, directors, officers and employees. . . .

322. By the letter of the Defendants “Revolving Charge Account,” the Defendants have the ability to deduct all amounts owed and charge the highest interest allowed by law or 24% APR if a consumer fails to sign and return “any other requested information,” fails to provide a photocopy of a “valid state issued drivers license or identification card; a federally issued social security card, a current utility bill, a current pay stub, current bank statement in [the consumer’s name] showing a positive balance,” fails to provide notice of a change in address, or brings, joins or participates in any class action against the Defendants.

323. Under the Defendants’ “Retail Installment Contract” used after late 2006, the Defendants state the following, in relevant part:

DEFAULT: [Y]ou will be in default if you do not keep any other agreement in this Contract. If you are in default, we may require you to pay at once the unpaid balance of the Amount Financed, the earned and unpaid part of the Finance Charge and all other amounts due under this Contract. Further, if you are in default you agree that the rate of interest shall be increased to 24% or the maximum rate allowed by law, and that rate shall be applicable to any post-judgment interest as well. Also, if you are in default, you give us permission to draft your checking or savings accounts in any amount at any time until your account balance is paid in full.²⁶⁰

324. Elsewhere in the same “Retail Installment Contract,” the Defendants state the following, in relevant part:

ACCURACY OF INFORMATION/CREDIT REPORTS:
[A]dditionally, upon request, you agree to promptly give us accurate updated financial information about yourself. . . .

MISCELLANEOUS: You agree to notify us if you change

²⁶⁰ Ex. 8, Aff. of Jessica King, Attach A.

your address.

325. By the letter of the Defendants' "Retail Installment Contract" the Defendants have the purported ability to accelerate all amounts owed and increase the interest rate to the maximum allowed by law or 24% APR if a consumer fails to promptly give accurate updated financial information about himself or herself or fails to notify the Defendants of their change in address.

USING UNLAWFUL CHOICE OF LAW AND FORUM SELECTION CLAUSE

326. Each of the Defendants' consumer contracts contain a choice of law and forum selection clause that unlawfully attempts, without restriction, to place the governing law interpreting the contract and venue outside of Tennessee. The State does not attempt to challenge the validity of the Defendants' arbitration clause through the instant action.

327. In its pre-March 2006 "Revolving Account Agreement," the Defendants stated the following in relevant part:

ENTIRE AGREEMENT & LAW. [T]his Agreement shall be construed and enforced in accordance with the laws of the State of Maryland and the venue for any action, dispute or proceeding, with respect to this Agreement shall be in Baltimore, Maryland.

328. In BlueHippo Capital's March 2006 to late 2006 "Layaway Agreement Terms and Conditions," stated the following, in relevant part:

CHOICE OF LAW & VENUE: This Agreement shall be deemed to have been made, accepted, and executed in the State of Nevada. Nevada law, without regard to choice of law, governs the interpretation, validity and enforcement of this Agreement. The venue for any action, dispute or proceeding with respect to this Agreement shall be Las Vegas, Nevada.

329. In the Defendants' "Revolving Charge Agreement" which was used between March 2006 and late 2006, the company stated the following:

CHOICE OF LAW & VENUE: [M]aryland law, without regard to choice of law, governs the interpretation, validity and enforcement of this Agreement. The venue for any action, dispute or proceeding with respect to this Agreement shall be Baltimore, Maryland.

330. In BlueHippo Capital's current "Layaway Agreement," the company states, in relevant part, the following: "I agree that the choice of law and venue shall be Virginia. .
."

331. In the Defendants' current "Retail Installment Contract," the following statement is made, in relevant part:

GOVERNING LAW & VENUE: The law of the state of Virginia applies to this Contract; and, venue for any action, dispute or proceeding with respect to this Contract shall be in Fairfax County, Virginia. If that law does not allow all the agreements in this Contract, the ones that are not allowed will be void; and, the rest of this Contract will still be good.

FAILING TO DISCLOSE SPECIFIC COMPUTER MODEL

332. Throughout their business models, the Defendants have failed to disclose, clearly and conspicuously or otherwise, other material terms associated with the consumer transaction.²⁶¹

333. None of the Defendants' advertisements disclose the specific computer model or other product model that the Defendants are offering.

ENGAGING IN UNLAWFUL COMMERCIAL ACTS CONCERNING DEFENDANTS' REBATE PROGRAM

334. The Defendants have both actively misrepresented the terms of their rebate program and failed to adequately disclose, clearly and conspicuously or otherwise, material terms of their rebate program, which can affect between 15% to almost 40% of the consumer's


²⁶¹ Ex. 2, Aff. of Tina White, at para. 6; Ex. 23, Aff. of Carl Lewis, at para. 5.

total purchase price - excluding interest.

Unlawful Commercial Acts Concerning Defendants' Rebate Program Prior to March 2006

335. BlueHippo's pre-March 2006 "Shipping Verification Form" represented that the consumer will receive a \$500 rebate off of their computer for a specific product order, when, by BlueHippo's own documents, this is not true.

336. BlueHippo stated in its Pre-March 2006 "Shipping Verification Form" the following:

Employment Information			
Name: Sample's Towing and Repair		Phone: (123) 987-6540	
Monthly Income: \$2,900		Time On Job: 4 years 5 months	
Bank Information			
Bank Name: First Bank of Example		Account Type: Checking	
Routing Number: 00123456789		Account Number: 54321000123	
Order Information			
Specifications	Qty	Product	Unit Price
• Intel Celeron Processor, 2.5 GHz	1	Desktop 2004 E	\$1,764.11
• 128 MB SDRAM Memory	1	Software Bundle	\$25.00
• 40 Gig Ultra Hard Drive			
• 17" Color Monitor			
• Stereo Speakers			
			
Payment Information			Subtotal: \$1,789.11
You've agreed to a One-time Payment of \$124.00 to be drafted on 12/10/2004, followed by weekly payments of \$35.99 beginning on Friday December 31 st and continuing until your balance is paid in full.			Sales Tax: 0.00
			Shipping: 0.00
			Good Pay Discount: (\$500.00)
			Total: \$1,289.11
<small>This purchase is eligible for our ACCELERATED SHIPPING PROGRAM, provided you continue to meet the conditions of your Revolving Account Agreement. Your merchandise is not kept in stock. We reserve the right to substitute merchandise of equal or greater speed. All payments are NON-REFUNDABLE except when the original or similar merchandise is no longer available in the same condition as at the time of this sale.</small>			

337. Yet in BlueHippo's required Revolving Account Agreement, BlueHippo stated the following, in relevant part:

PAYMENT AS AGREED. Provided you have made all of your payments as agreed and have not been in Default at any time, you will be shipped any free items indicated on your Shipping Verification Form and you will then be eligible for any Good Pay Discount *which will be applied as a credit toward your account.*

338. Prior to March 2006, BlueHippo falsely listed the “good pay discount” as being credited against the specific purchase rather than future purchase.²⁶²

339. Prior to March 2006, BlueHippo also did not clearly and conspicuously disclose the material terms of its “Good Pay Discount” program.

*Unlawful Commercial Acts Concerning the Defendants’ Rebate Plan
During the March 2006 to Late 2006 Layaway Period*

340. Under the Defendants’ rebate programs during the March 2006 to late 2006 “layaway” business model, the Defendants used “mail-in” rebates that altered the total price paid by the consumer up to \$900.00.

341. The Defendants’ March 2006 to late 2006 “layaway” sales script implied that the consumer would receive their rebate immediately when this was not the case.

342. The Defendants’ March 2006 to late 2006 “layaway” sales script employed a \$300 rebate. The sales script stated the following, in relevant part:

Provided you make your payments as agreed, after your activation payment and \$300 mail-in rebate - it actually brings your entire computer system to just \$1,804 - *and all of that is completely included in your weekly payment.*²⁶³

343. Yet the Defendants’ March 2006 to late 2006 “Layaway Plan Agreement” stated the following, in relevant part:

SPECIAL PROMOTIONS: Any special promotions, rebates or free items (cash or other) included in your purchase are provided contingent upon your Account not going into default. *Cash disbursements will be paid upon your balance being paid in full and your Account not going into Default status at any time between your purchase date and your final payment whether*

²⁶² See Ex. 14, Aff. of Shinetta Berry, at para. 12 (“I was also guaranteed a three hundred dollar (\$300.00) rebate in the initial sales call. Although I made every payment to Blue Hippo on time, I have never received the rebate.”)
²⁶³ Ex. 54, March 2006 to Late 2006 Layaway Sales Script.

financed or not. If your Account goes into Default, at any time, you may be required to pay for those promotional free items and they will be added to your principal. You agree to acquire any applicable rebate forms by logging into your account at www.bluehippo.com.

344. The Defendants' March 2006 to late 2006 "Revolving Charge Agreement"

likewise states the following in relevant part:

10. SPECIAL PROMOTIONS: Any special promotions, rebates or free items (cash or other) included in your purchase are provided contingent upon your Account not going into Default status at any time between your purchase date and your final payment, whether financed or not. If your Account goes into Default, at any time, you may be required to pay for those promotional free items and they will be added to your principal or you may become ineligible to receive these items, discounts or rebates. You agree to acquire any applicable rebate forms by logging into your account at www.bluehippo.com.

Misrepresentations as to Rebate During the Current Business Model

345. In the current business model, the Defendants have continued to imply that the consumer will receive their rebate immediately, when this was not true..

346. The current sales script states the following, in relevant part:

Provided you make your payments as agreed, after your initial payment and \$300 mail-in rebate — it actually brings it to just \$2,298 - *and all of that is completely included in your bi-weekly payment.*

347. After March 2006, the Defendants began offering a "mail-in rebate" in conjunction with their offer for computers, other electronics, and other products.

348. The material terms of the "mail-in" rebate, namely that it is conditioned on on-time consecutive payments and must be applied for through the Defendants' web site with an account number at the conclusion of all payments, are not clearly and conspicuously disclosed by

the Defendants in any of its documents including the financing documents.

349. In a sheet marked, “Additional Provisions” under the phrase “Special Promotions” the following:

SPECIAL PROMOTIONS: Any special promotions, rebates, or free items (cash or other) included in your purchase of the Property are provided contingent upon this Contract not going into default at any time between your purchase date and your final payment and you will receive them after all payments have been made. If this Contract goes into default at any time, you may be required to pay for those promotional free items and they will be added to the Amount Financed or you may become ineligible to receive these items, discounts or rebates. You agree to acquire any applicable rebate forms by logging into your account at bluehippo.com.

350. The only reference to terms and conditions of the “rebate” in the Defendants’ current sales script are as follows:

Provided you make your payments as agreed, after your initial payment and \$300 mail-in rebate — it actually brings it to just \$2,298 — and all of that is completely included in your bi-weekly payment.

If you understand the payment terms described and that it's important for your payments to be made on time in order to get your rebate and prevent your computer shipment from being delayed, please say the word “OK.”

DEBITING CONSUMER ACCOUNTS COUNTER TO AGREEMENT

351. The Defendants have consistently debited consumer bank accounts in violation of the terms of their electronic funds transfer authorization.²⁶⁴

264 Ex. 1, Aff. of Georgia Harper, at para. 8 (“[I] asked BlueHippo to deduct the bi-monthly payment from my account the 15th and 30th of the month. For about 6 months, BlueHippo would deduct from my account earlier than these days, causing my account to be over-drafted. BlueHippo would charge \$20 each time they caused my account to be over-drafted. In addition, my bank charged me approximately \$20 for each overdraft.”) See also, Ex. 62, Aff. of Judy Young, at paras. 5-14 (Consumer states that she was billed, but never ordered from BlueHippo. “BlueHippo’s debits from my bank account have caused me to lose more money than the amount BlueHippo has deducted and failed to refund. My bank charged me \$31.00 each day my account was overdrawn. I have tried my

352. In the original sales call, the Defendants verbally ask consumers for permission to debit the consumers checking account on a set day.

353. Many consumers with billing addresses in Tennessee have had their checking accounts debited before or after the agreed-upon date.²⁶⁵

354. As an example, consumer C. Roberts's checking account was debited two or three days early causing her to default on the payment. As a result of the insufficient payment caused by the Defendants early debit, the Defendants *then charged* Ms. Roberts a twenty dollar (\$20.00) late fee. Ms. Roberts' bank also charged her a thirty dollar (\$30.00) overdraft fee.

355. The Defendants do not clearly and conspicuously disclose on the original sales call that if the consumer would like to discontinue the Defendants automatic debits, they must submit a notice to the Defendants in writing.²⁶⁶

best to better my situation but I haven't been successful. BlueHippo's deductions and my bank's charges have caused me to become very late on several bills including my water bill, my electric bill and my mortgage."); See also, Ex. 8, Aff. of Jessica King, at para. 12 (consumer has paid \$3200.00 but contract is only for \$1878.48, yet she is still billed); Ex. 12, Aff. of Cynthia Brunat, at para. 14 ("I finally called BlueHippo on December 21, 2007 and faxed them a letter and told them to stop taking money out of my account. They took a payment that very day and two more payments after that."); Ex. 22, Aff. of James Robertson, at paras. 12-13 ("I notified BlueHippo that I no longer wished to make payments to the company by a telephone call and the customer service agent complied and said that they would refund my money. Only after complaining to the Better Business Bureau was I able to get my full refund back from Blue Hippo. Additionally, Blue Hippo took two to three (2-3) unauthorized payments from my account after I had asked to cancel the payments. It took several attempts and a lot of hassle to make Blue Hippo pay all my money back.")

265 See, e.g., Ex. 4, Aff. of Connie Roberts, at para. 13 ("One time, I called BlueHippo to make arrangements to have my payment taken out of my account on a Saturday instead of my regularly scheduled day, Friday. BlueHippo told me that they would. However, BlueHippo did take it out early even before my regularly scheduled day. I remember them taking it out on Wednesday or Thursday. When this payment bounced, my bank charged me about thirty dollars (\$30.00) and Blue Hippo charged me twenty dollars (\$20.00)."); Ex. 26, Aff. of Idell Robertson, at 9 ("Blue Hippo was often late on taking out the payments. Due to BlueHippo not taking the money out of my account on the agreed dates, three of my payments were late to BlueHippo but they the [sic] still received the payments. Blue Hippo also took out a late fee for each of the late payments. Additionally, my bank also charged me approximately \$35.00 (thirty five dollars) for each late payment."); Ex. 29, Aff. of Robert Hughes, at para. 8 ("I agreed for them to take my payment out every Friday, and I believe they took out my payment on a Thursday twice. When BlueHippo took out the money early, it caused my account to be overdrafted. I had to pay an overdraft fee each time to the bank because of this.")

266 See also, Ex. 12, Aff. of Cynthia Brunat, at para. 14 ("I finally called BlueHippo on December 21, 2007 and faxed them a letter and told them to stop taking money out of my account. They took a payment that very day and

356. A significant number of consumers who sought to stop the Defendants' automatic debits have tried to contact the Defendants through their customer service number.²⁶⁷

357. A significant number of consumers who have sought to stop the Defendants' automatic debits have been told by the Defendants representatives that their order has been canceled or never were able to reach a live person on the Defendants' customer service phone numbers.

358. A significant number of consumers who sought to cancel their order with the Defendants have had to close their checking accounts to prevent the Defendants from taking out more money.²⁶⁸

two more payments after that.”)

267 See, e.g., Ex. 61, Aff. of Jeremy Kirby, at para. 12; Ex. 4, Aff. of Connie Roberts, at para. 11; Ex. 22, Aff. of James Robertson, at para. 12 (“I notified BlueHippo that I no longer wished to make payments to the company by a telephone call and the customer service agent complied and said that they would refund my money.”)

268 See, e.g., Ex. 63, Aff. of Linda McIntosh, at para. 9 (“I had to close my bank account as a result of BlueHippo. This has caused me to have my social security disability payment to be delayed because of the time it takes for the Social Security Administration to process a new account number.”); Ex. 11, Aff. of Kathy Collins, at para. 11 (“After I cancelled with BlueHippo, they continued to debit my account. This forced me to close my account. BlueHippo told me that this money was lost and that I could not use the money to purchase anything else from them.”); Ex. 9, Aff. of Angela Atkins, at para. 12; Ex. 13, Aff. of Angela Ard, at para. 12; Ex. 16, Aff. of Rebecca Good, at para. 14; Ex. 18, Aff. of Christine Pruitt, at para. 13 (“After I tried to cancel with Blue Hippo, I told them to stop taking money from my account. However, they continued to try to debit my account. I had to put a “stop-payment” on my account. This cost me \$15.00.”); Ex. 21, Aff. of Cari Wilson, at para. 13 (“I notified BlueHippo that I no longer wished to make payments to the company by several phone calls starting in October after noticing that they had been debiting my account for several months. I had not noticed this before because I had been in recovery from my surgeries. Despite repeated requests to Blue Hippo to stop taking money out of my account, they did not. The customer service people at Blue Hippo told me that they [sic] I was not in their system or their records. Because they continued to take money out of my account, I had to pay hundreds of dollars in overdraft fees. I had to first freeze and then close my checking account in order to have them stop withdrawing money out of my account. This was extremely inconvenient because I had to switch all my other payment information.”); See also, Ex. 23, Aff. of Carl Lewis, at para. 11 (“I had to talk to the credit union about stopping the payments to BlueHippo. Even after I talked to the credit union, BlueHippo still took money out of my account.”); Ex. 25, Aff. of Barbara Smith, at para. 11 (“I notified BlueHippo that I no longer wished to make payments to the company by several phone calls. When they continued to take money out of my account, I felt like I need [sic] to make a stop-payment on my account, which cost me twenty dollars (\$20.00).”); See also, Ex. 27, Aff. of Allen Hubbard, at para. 12; Ex. 29, Aff. of Robert Hughes, at 12 (“I notified BlueHippo that I no longer wished to make payments to the company by calling, but I always got the run around. I went ahead and closed my checking account in order to stop BlueHippo from taking money out of my account.”); Ex. 30, Aff. of Rosie Cannon, at 12 (“When Blue Hippo told me that they would not refund my money, I asked for store credit and then decided to order my grandson a twenty inch monitor. I

359. Consumer C. Wilson had to first freeze and then close out her checking account to stop the Defendants from taking out more money after calling the Defendants multiple times to cancel her order.

DETECTING MEANINGFUL CONSUMER REDRESS

360. The Defendants' sales script directs consumers to ask any question they may have prior to the recorded portion of the sales call in which material facts, such as the Defendants' no or limited refund policy, are purportedly disclosed, albeit inadequately, for the first and only time.

361. The pre-March 2006 sales script and the "layaway" sales script used from March 2006 to late 2006 both state the following, in relevant part:

Alright [consumer first name] the last part of our call is recorded to ensure accurate entry of your information. If you have any questions please ask them now. If you ask them during verification I will have to start over from the beginning. Do you have any other questions before I start recording?

IF THE CUSTOMER STOPS YOU AT ANY POINT IN THE RECORDING YOU MUST START OVER FROM THE BEGINNING OF THE RECORDING PAGE.

362. The current sales script states the following, in relevant part:

Alright [consumer's first name] the last part of our call is recorded to ensure accurate entry of your information. It will also constitute our layaway agreement relating to your computer purchase. You will be receiving a complete Welcome Kit that will also include a copy of everything I'm going over now. If you have any questions please ask them now. **If you ask them during the verification I will have to start over from the beginning. Do you have any other questions before I start recording?**

understood that I had paid enough in order to receive this monitor. Four or five weeks later, I noticed that BlueHippo was taking \$9.99 out of my checking account every week. I did not authorize this deduction. Again, I had to put a 'stop payment' on my account which cost me another \$25.00.")

IF THE CUSTOMER STOPS YOU AT ANY POINT IN THE
RECORDING YOU MUST START OVER FROM THE
BEGINNING OF THE RECORDING PAGE.

363. In other cases, sales representatives tell consumers that they should ask any questions *after* the recording process in which they manifest their assent to the contract.

364. On the original sales phone call, consumers are frequently told to contact the Defendants customer service number with any questions or problems.²⁶⁹

365. Consumers who call the Defendants to complain or cancel their orders are often placed on hold for an extended amount of time.²⁷⁰

366. Consumer C. Brunat, for example, was placed on hold for thirty to forty-five minutes (30 to 45) minutes numerous times when she contacted the Defendants.²⁷¹

367. The long call waiting time effectively deters the consumer's ability to seek any redress from the Defendants.

MIREPRESENTING SECURITY MEASURES IN PLACE FOR ONLINE ORDERS

368. During online orders, the Defendants ask for sensitive personally identifying information such as the consumer's bank account number, social security number, employer, income, and home phone number.

²⁶⁹ See Ex. 5, Aff. of Danika Blunt, at para. 13 ("I have called BlueHippo to ask about the delivery of my computer and every person I talked to always told me, "the tracking number is on its way.")

²⁷⁰ Ex. 1, Aff. of Georgia Harper, at para. 12; See also, Ex. 2, Aff. of Tina White, at para. 15; Ex. 4, Aff. of Connie Roberts, at para. 15 ("Also, I have never been able to speak with anyone who has answers including supervisors."); Ex. 7, Aff. of Billy Bowling, at para. 12 ("After a total of 8 or 9 months had gone by, I finally gave up and tried to cancel with BlueHippo but at this time, I could never get anyone from BlueHippo to speak with me. Every time I called all I heard was music and I was never able to speak with anyone."); See also, Ex. 17, Aff. of Deldra Wells, at para. 11 ("I notified BlueHippo that I no longer wished to make payments to the company by calling and emailing them . . . I never received a response to my email."); See also, Ex. 29, Aff. of Robert Hughes, at para. 12 ("I notified BlueHippo that I no longer wished to make payments to the company by calling, but I always got the run around."); ²⁷¹ Ex. 11, Aff. of Cynthia Brunat, at para. 10.

369. The Defendants have represented that their online payment portals on their websites were secured through a Secure Sockets Layer (SSL), when this was not the case.

THE DEFENDANTS HAVE ENGAGED IN UNLAWFUL LENDING

370. The Defendants are not registered as an industrial loan and thrift company in Tennessee²⁷² and have let their only known lending license expire.²⁷³

371. During the time that the Defendants did not have a license or were not properly registered in Tennessee or any other State, the Defendants have held themselves out, either expressly or implicitly, as a company that was lawfully licensed or registered to engage in lending.

Respectfully submitted,

/S/ JEFF HILL

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*Application for admission in W.D. Tenn. Pending

272 Ex. 64, Aff. of Carl Bryan Scott, Licensing Director for the Compliance Division at the Tennessee Department of Financial Institutions, at paras. 5-7

273 Ex. 65, Aff. of Anne Ecker, Director, Licensing Unit, Department of Labor, Licensing, and Regulation for the State of Maryland (We anticipate filing a notarized copy shortly).

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was filed electronically this 5th day of December, 2008. Notice of this filing will be sent by operation of the Court's electronic filing system to Gerald D. Neenan, Neal and Harwell, PLC, 150 Fourth Avenue North, Suite 2000, Nashville, Tennessee 37219.

/S/ JEFF HILL

JEFF HILL